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CONTENTS FOR MARCH

DEPARTMENTS

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THE LEAGUE'S BUSINESS

New York City Hears About Cincinnati's Achievements.—The New York Committee of One Thousand, headed by Dr. William Jay Schieffelin, is holding a series of meetings at the Town Hall for the purpose of acquainting New Yorkers with the achievements of Cincinnati under the city manager plan. The first meeting in this series was held on January 15 with Henry Bentley, president of the Cincinnati City Charter Committee, as the speaker. On February 8, Charles P. Taft, 2nd, spoke on "The Redemption of Cincinnati from Partisan Rule," and Mr. Taft's address was broadcast over WOR. On March 18, the Hon. Russell Wilson, Mayor of Cincinnati, will speak at the Town Hall on "The City Manager Plan."

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Additional Members for Committee on Model Special Assessments Law.—On this page last month was printed the personnel of our Committee on Model Special Assessments Law which had been appointed by President Seasongood. Chester B. Masslich, of Masslich and Mitchell, has since been added to the committee. Mr. Masslich assisted in the drafting of the recommended special assessments law recently adopted by the Investment Bankers Association of America and the U. S. Chamber of Commerce. The American Planning Institute, at our request, has appointed Herbert S. Swan, of New York City, as its representative on this committee.

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League Represented at Anti-Hoarding Conference.—Harold S. Buttenheim, editor of *The American City* and member of our executive committee, represented the National Municipal League at President Hoover's Conference against hoarding on Saturday, February 6, at the White House. Since the conference, Mr. Buttenheim has been asked to serve on the advisory committee of the Citizens' Reconstruction Organization by Colonel Frank Knox, publisher of the *Chicago Daily News*, who is heading the movement.

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Revision of Model City Charter.—As announced on this page in January, a meeting of the Committee on New Municipal Program was held at Princeton, N. J., on January 15, 16 and 17, at which time five representatives of the International City Managers' Association aided in considering the revision of the *Model City Charter*. The following members of our committee were present: M. N. Baker, John Bauer, Emmett L. Bennett, A. E. Buck, Richard S. Childs, H. W. Dodds, John N. Edy, John A. Fairlie, Mayo Fesler, A. R. Hatton and Thomas H. Reed. The following were also present by invitation: Louis Brownlow, Charles A. Carran, W. F. Day, Howard P. Jones, J. M. Leonard, C. E. Ridley, R. W. Rigsby and Stephen B. Story.

By action of the executive committee the following four city managers have now been added to our Committee on New Municipal Program: Charles A. Carran, East Cleveland, Ohio; W. F. Day, Staunton, Va.; R. W. Rigsby, Asheville, N. C.; and Stephen B. Story, Rochester, N. Y.

It is expected that the new edition of the *Model City Charter* will be issued sometime during the current year.

RUSSELL FORBES, *Secretary*

Editorial Comment

March

NATIONAL MUNICIPAL REVIEW

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The following extract from a letter from Mayor J. Fulmer Bright of Richmond, Virginia, is news these days:

> Richmond is operating well within its revenues and shows a cash balance of $192,757.94 for the fiscal year beginning February 1, 1932. There will be no increase in real estate or other taxes in 1932. In fact, in 1931 we allowed a marked decrease in the tax on machinery. There will be no decrease in salaries or wages. Unemployment and relief funds are derived from current revenues and there will be no borrowing, floating debt or bond issue to care for these needs. While the city of Richmond is fully sharing in the burden of depression, we are sailing on an even keel and all is well with us.

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"Work relief is still relief; and it requires no laboring of the point to state that all relief-giving involves the determination of need. This is within the peculiar province of social work; and the ordinary procedure of an employment agency does not suffice. There is ample evidence . . . that when skilled and experienced social workers have been busy at the source of applications, the selection of workers has gained greatly in effectiveness." (From forthcoming book "Setting Up a Program of Work Relief" by Joanna C. Colcord.)

A Good By-product of a Nervous Municipal Bond Market Students of municipal administration who read Mr. Shanks' article on the municipal bond market can be pardoned if they emit several "I-told-you-so's" as they go along. Formerly the bond customers' only query was, are these municipals legal? Now, writes Mr. Shanks, they are asking questions which a year ago many bond specialists would not have been able to understand, let alone answer intelligently. Today the buyer wants to know the city's tax collection record, its budget deficits, future needs, and steps being taken to reduce operating expenses.

For years bureaus of municipal research and taxpayers' organizations have been voices crying in the wilderness. They stressed the importance of accrual accounting, cost accounting, balanced budgets, carefully planned borrowing programs, equitable assessments, improved tax collection methods, administrative economies. But Demos was on a joy-ride and couldn't be annoyed by such dull matters. And anyway the city council could always levy heavier taxes if worst came to worst.

Today a new ally of reform has appeared in the inquiring bond buyer. He is a welcome addition to the

forces which have been urging business-like financial methods upon public officials.

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N. M. L. Charged with Traitorous Propaganda to Install Imperialistic Government

Students of city government are aware that within a short time after the introduction of the manager plan in a particular city a backfire develops in the shape of an effort to change the charter or to recall the council. Politicians forced out of city hall by the new government watch their chance and seize the first likely opportunity to begin a counter-revolution.

One is on now in Dallas. It is an attempt to recall the council "individually and collectively." At this writing it is not known whether sufficient signatures can be secured to order an election. The petition recites a long list of grievances. Paragraph No. 4 deals with the National Municipal League and we think we owe it to our readers to reprint it here for their information and guidance:

> Because the said Councilmen, and each of them, and their appointee the said City Manager Edy, are operating the affairs of the City of Dallas under direct instructions and policies emanating from a trust-controlled organization known as the National Municipal League, with headquarters at 261 Broadway, New York City; and which said "League" was organized, is financed and controlled by Wall Street trusts, and is purposed to inveigle the people of the towns and cities of the United States, by falsehoods and traitorous propaganda, into installing this corporate, imperialistic "City Manager" system, or "King's Agent" government, in all the towns and cities of the country.

That we are financed and controlled by Wall Street trusts will be news to our treasurer, Mr. Carl H. Pforzheimer, who for several years has contributed from his own pocket to help meet our ever-healthy deficit.

Milwaukee's Famous Surplus

In this number Paula Lynagh dissects Milwaukee's claim to fame by reason of a "$4,000,000 surplus in the bank," news of which has spread far and wide. She points out that while the city has some cash on hand, it is not properly to be termed a surplus, consisting as it does mostly of unspent bond monies.

She proceeds further to analyze Milwaukee's debt situation and the circumstances which put the city upon a partial pay-as-you-go basis. She states that the city debt alone does not tell the story but that the county debt and the sewerage debt must be considered since 80 per cent of the latter two obligations will be retired by city taxpayers.

We agree that Milwaukee officials would be dealing more honestly with the public at large if the sewerage debt were included in the statements of city finances. They may be pardoned, however, for their failure to include county debt. Most of our cities are in counties and help to contribute to county costs, but city financial statements usually do not consider them since city officials have no control over them.

Mrs. Lynagh's article is devoted to the debt situation. She believes that on the whole Milwaukee is well governed. Her analysis does not disparage the real financial accomplishments of Milwaukee as set forth by Mayor Hoan in our February issue, but it does turn needed light upon certain exaggerated and fanciful claims to financial affluence in these hard times.

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Municipal Government in the Nation's Service

In a radio address over Station WLW, Mr. Murray Seasongood, speaking as president of the National Municipal League and former mayor of Cincinnati, said:

This is a most opportune time to further good city government in our country. Some one said recently, when new methods of taxation were being discussed, "What we need in these times of stress and depression is not a tax on checks, but a check on taxes." It is time to save and saving in government counts just as much as saving in business. . . . More than fifty per cent of the taxes collected in the United States are raised for local administration, as contrasted with state and national government. Local taxes exceed the sum of the taxes collected for state and national purposes. Why not save by good government where it will count the most?

There has been a mistaken emphasis on the place of municipal government in our national political structure. It is not the least important, but the most vital of our branches of government. State and national government touch more people than the government of the ordinary city, but city government is closer to their lives and means more, as it concerns their health, safety, happiness and well-being every day and every moment. The erroneous prevalent idea that it is a promotion to go from city to state or national office must be dispelled. There is nothing more essential than good city government and there is no more patriotic duty in time of peace than to have a share in it, whether as official or citizen.

Mr. Seasongood is right, and the fundamental doctrine of the National Municipal League has never been better expressed. Among that group of highly respectable citizens assembled in Philadelphia in 1894 to organize the National Municipal League, Wendell Phillipp's prophesy was accepted as a self-evident truth. "Our great cities," said he, "will test our free institutions more severely than our struggle with human slavery."

Obviously the community which cannot keep its own house in order has nothing to contribute to the security of the nation. But national issues are generally more dramatic. There are exceptions, of course, and the last election in Cincinnati was one of them. In it municipal issues far outshadowed the congressional election, although the latter was supposed to determine whether the Republicans or the Democrats would control the House of Representatives.

By and large, however, local questions are hum-drum because they are so familiar. Distance lends enchantment. And yet the individual's influence in national affairs is infinitesimal to what he can accomplish in his own community. Nowhere can he become an effective force so easily as in the field of his own municipal government.

Fortunately, there are indications that public attention is turning from exclusive absorption in national and international affairs to an active interest in local government.

In common with all forces interested in good government the National Municipal League mourns the passing of Julius Rosenwald. For years he had been a regular contributor to our organization, as to scores of others working for society's betterment. The Rosenwald Foundation, which has blazed new trails in many fields, continues as a graphic expression of his personality and as a memorial which is recognized as unique in American experience. Mr. Rosenwald's peculiar influence did not arise from great wealth alone. It was due to wealth coupled with extraordinary insight and independent judgment. While business success added to his influence in civic affairs, he will live in memory as an indefatigable campaigner for decent politics and social reform.

Real Estate Boards Survey Local Finances

Professor Simeon E. Leland of the University of Chicago has recently completed an eighteen months' survey of state and local finance on behalf of the National Association of Real Estate Boards. His fiscal reform program of thirty-one points, as announced by the Association, while generally acceptable, carries some debatable recommendations.

Professor Leland rightly emphasizes the need for improved accounting systems to govern the expenditure of the vast sums of public money. Most governments, he declares, prepare no budgets. Special assessments against real property are most unfairly employed. Townships should be abolished and only one layer of local government should function in a single area.

As might be expected in a report to real estate boards, the over-taxation of real property is emphasized and an income tax is recommended. The time has passed when the general property tax should serve as the sole elastic element in a tax system. With this most REVIEW readers will agree.

Another recommendation calls for the transfer to the state government of complete responsibility for financing educational, charitable, health and similar purposes to the extent that the benefits of such functions do not accrue particularly to property owners as such.

It is true that real estate is carrying too heavy a burden. While realtors and many home owners have only begun to feel the pressure, the plight of the farmer has been serious for many years. If the city and country unite in a program of real estate relief something may be accomplished. The income tax is found now in twenty states. It has been officially recommended in many others. We can expect its rapid spread.

With the adoption of the income tax, and other taxes resting on a state-wide basis, the question of state aid to a locality, or in lieu thereof, the transfer of activities, at present local, to the state appears in aggravated form. The report of the New Jersey Commission on Municipal Taxation and Expenditures accepts the transfer idea as against state aid. But each proposal to merge local activities in state administrative hands must be carefully examined. There is no universal rule which can be safely followed. The present depression has taken a good bit of the magic out of the word "merger"; we know that many business mergers have been unprofitable from the economic and public standpoint.

Professor Leland recommends the allotment system of expenditures for all governmental units under accounting control to prevent unauthorized expenditures or expenditures in excess of appropriations. Periodic audits of local governments by state authority and the publication of information as to the financial status and operation of local governments are proposed. No benefit assessments for the repair or maintenance of streets should be tolerated; special assessments for municipal services should be abolished and the construction of streets, curbs and gutters in developed municipalities should be financed from general revenues.

Professor Leland has accepted most of the recommendations for economy and efficiency in public expenditures now current among advanced thinkers. The tax situation being what it is, the fact that they may work out to the advantage of real estate owners is no prima facie argument against them. A few of his proposals for real estate relief, however, are debatable and may be legitimately opposed by other community interests which must be considered.

HEADLINES

More than one hundred thousand signatures, or almost three times as many as are legally necessary, were attached to a petition just filed for the recall of Mayor Porter of Los Angeles. The mayor, it will be remembered, won international notoriety last summer when he refused to drink a toast to the president of France, apparently on the ground that the eighteenth amendment had jurisdiction in foreign territory!

* * *

If Tammany is playing Scylla to Governor Roosevelt of New York these pre-convention days, Judge Seabury is starring as Charybdis. Facing Seabury's insistence that he remove Sheriff Farley, the Governor was much embarrassed. Loss of Tammany support might mean loss of the Democratic nomination. Failure to fire Farley might lose him equally important anti-Tammany support. To cap the climax, when he finally discharged Farley, Seabury got the credit!

* * *

If the city of Philadelphia is to bring 1932 appropriations within estimated revenues, the city and county departments will have to operate on a budget of 40 per cent below the level of 1930, according to the Philadelphia Bureau of Municipal Research. Since this is obviously impossible without seriously crippling city services, some tall thinking will have to be done in the Quaker city during the next few months. If the city has to balance its budget without relief of some sort, "Philadelphia will be a city not worth living in," declares the president of the council.

* * *

Thirty-nine-year-old Ray T. Miller, Democrat, is now mayor of Cleveland. The former county prosecutor won by a safe margin over former City Manager Daniel E. Morgan, his Republican opponent, in the election February 16. To Newton D. Baker's influence goes part of the credit for the victory. For the rest—blame the depression! For Cleveland, in an election that drew two hundred thousand citizens to the polls, went Democratic for the first time in seventeen years.

* * *

A bill to restrict the application of the New Jersey city manager enabling law has been introduced by Assemblyman Byrne. Under the terms of the bill, first-class cities can no longer adopt the plan. Apparently the manager movement in Jersey City last spring worried Mayor Frank Haig more than he admitted.

Virtual abolition of the parks and recreation departments in Detroit will be required to bring about economies demanded by New York bankers before approving loan. Financial dictators are replacing political bosses these days!

* * *

A study of the relations of state, county and town governments in New Hampshire will be undertaken in an effort to reduce costs, Governor Winant announces. Henry P. Seideman of Washington, D. C., will supervise the field work.

* * *

City-county consolidation movements are springing up here and there throughout the country. Birmingham, Los Angeles, and Omaha are among the numerous places where mergers are being proposed.

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Chicago's $60,000,000 special subway fund, built up over a period of years, has all been used to pay city hall salaries. Salaries come before subways these days!

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Court action is threatened against Detroit's plan to sell outright on April 5 property assessed at $500,000,000 on which $14,600,000 in taxes is delinquent.

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Complete reorganization of the administrative machinery of the state government of Mississippi has been proposed by Governor Conner whose recommendations follow a survey just completed by the Brookings Institution.

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Many New Jersey municipalities face mounting debts which it will be impossible for them to meet, as they come due. An act to permit them to refund interest deficiency notes or bonds has been introduced in the New Jersey legislature. New Jersey cities are not unique in this respect.

* * *

A bill to amend the home rule law of New York State to permit 15 per cent of the voters of any city to force the calling of an election to create a commission to draft a new charter has been introduced into the senate by Senator Samuel H. Hofstadter, chairman of the legislative committee investigating New York City. A similar bill was presented last year but failed of passage.

* * *

History textbooks are coming in for examination again. The assembly of Wisconsin has passed a resolution providing for the appointment of a committee of educators to study and determine the veracity of textbook statements placing the blame for the World War.

* * *

The Cincinnati city water works, in addition to making $499,194 in capital improvements in 1931, had net earnings of $112,156.

* * *

On February 23 the voters of Ravalli County, Montana, were to vote on the county manager plan. The Montana legislature passed an enabling act at its last session permitting any county to adopt the manager plan after referendum.

HOWARD P. JONES.

The Seabury Revue of 1932

Counsel to the legislative committee investigating New York City files his first annual report

BY HOWARD P. JONES *Public Relations Secretary, N. M. L.*

If, as Will Rogers said recently, it was too much penmanship that got us into the World War, Tammany Hall need not worry about wars, past, present or future. Indeed, avoidance of war, civil or internecine, is manifestly a cardinal canon in the creed of the fathers of the Union Square cathedral. There is no penmanship whatsoever in Tammany transactions. Even checks, which when cashed return to the sender, constitute too much penmanship in the opinion of George W. Olvany, former leader of Tammany Hall.

The board of standards and appeals in New York City, which must approve variations from the zoning ordinance, consists of five persons, all of whom are political appointees. According to the report submitted by Samuel Seabury, counsel to the legislative committee investigating the government or misgovernment of New York City, Judge Olvany's firm was in fact, though not on the record, the attorney for applicants before this board in cases involving fees aggregating a quarter of a million dollars, of which by far the lion's share went—not to attorneys of record—but to the Olvany firm. Such remittances to Olvany's firm in each case were made by delivering, without even a covering letter, the major portion of the fee in cash or cashier's checks. For this (to Seabury) "extraordinary and highly suspicious practice," the members of the firm offered the explanation that they did so to prevent other attorneys from exploiting their connection with the Olvany firm by exhibiting returned bank vouchers bearing the Olvany endorsement.

Realizing the great prestige of the institution he represents, Judge Olvany would not for a moment consider putting anything in writing which might create the impression that a relatively obscure attorney represents the great!

There is no record of Olvany's reply to Seabury's quiet comment that "had the original check been deposited, the canceled voucher would have been in the possession not of an attorney but of the interests that were paying the bill." His silence should not be taken to imply, however, that the shrewd Tammany leader had no comeback. Ah, no. But it would not have been dignified for him to point out the obvious—that after all photostatic copies of checks are not unknown. And, of course, such copy would suffice for purposes of misinterpretation!

Mr. Olvany obviously preferred delivery in cash. Even incoming

checks were not received with the hospitality of ready endorsement. On the contrary, said checks—when not received in the usual course of business—were deposited without endorsement. Here again is evident Mr. Olvany's burning desire to keep the prestige of his institution above implication with the dubious or obscure.

He who would impute other motives to the former leader is manifestly a wretch—a libeler of the worst description! The something over $5,000,000 which was deposited to the credit of the firm but which does not appear in the firm's record was clearly for legal fees. The honorable Mr. Olvany's testimony on the stand refutes without possibility of rebuttal the charge that this $5,000,000 was the price of his political influence. Of course, when Mr. Olvany's firm appeared or when an attorney who had received the "smile of the king" appeared, invariably variations from standard practice were granted. Mere coincidence, doubtless.

* * *

The failure of the brokerage firm of McQuade and Brothers was an unfortunate event in the career of Register James A. McQuade, for, directly and indirectly as a result therefrom, James A. found himself faced with the necessity of supporting, single-handed, the thirty-four McQuades who constituted the family. Not that he minded the burden. The McQuade blood coursed through his veins. His McQuade heart beat true. It was a privilege.

But it did put him in an embarrassing financial position. Thirty-four mouths to feed, thirty-four persons to keep beneath the roof at night, thirty-four bodies to be clothed. And then, of course, the movies once in a while!

To do this it was necessary for Mr. McQuade to borrow money, pay it back and borrow more, repeating the process ad infinitum. Borrowing became more than a habit—it was almost a philosophy of life! In six years he deposited $547,000, most of which represented "borrowed" money since his salary only ranged from $9,000 to $12,000 during this period.

Everything worked out so well that Mr. McQuade's finanical embarrassment must have been assuaged considerably as time went on. Unfortunately, to his financial troubles, Mr. McQuade had to add the handicap of a poor memory. And it was really frightfully discomfiting to have to admit in public that he was unable to recall the names of any of those who had lent him all this money, when asked to do so by Judge Seabury. A most deplorable coincidence, but surely, to one who knows the thirty-four law-abiding McQuades, only a coincidence!

* * *

At the risk of overworking it, the word "coincidence" must again be applied to the interesting relationship between Mayor Walker (who is about due for another breakdown that will take him to Havana, the Cuban papers having already announced his hotel reservation) and Fred C. Harris, holder of a power of attorney over a safe deposit box held jointly with Russell Sherwood and Walker. Harris is treasurer and director of a bus company to which the mayor favored granting a franchise for $250,000 a year less than the offer of a competing company. And it might be mentioned in passing that Sherwood, the mayor's business representative, has risked a fine of $50,000 rather than appear as witness before Judge Seabury.

But then—he was on his honeymoon.

* * *

Sheriff Thomas M. Farley was another innocent victim, but neither of lack of memory nor coincidence. To the incredulity of blasé New Yorkers must be attributed his downfall if

downfall there be. Sheriff Farley was so fortunate as to have deposited more than $360,000 in a period of a little more than six years, although his total salary and other accounted income during this period did not exceed $90,000.

Very carefully he explained to a doubting investigator and an audience which had lost its faith in Alice in Wonderland, that the excess had come from a tin box, "a wonderful box" as he described it—in which he had kept money that he had accumulated when he was business agent of a union. The sheriff was very fond of his box and justifiably so, since he had put in it approximately $100,000 but had drawn out of it more than $300,000.

Mr. Farley also freely admitted depositing to his own account the interest on public funds, and showed his complete honesty by his complaint that he had just discovered he was only getting part of the interest to which he was entitled! Now the bewildered Sheriff has been indicted. What an unreasonable world!

* * *

There were others equally nonplused at the unreasonableness of the world or the Seabury investigators. William L. Kavanagh, deputy water commissioner of Manhattan, could see nothing unusual in banking $250,000 in eleven years on a salary ranging from $3,500 to $8,500 a year. Michael J. Cruise, city clerk, who deposited $144,000 during the last six years of which $32,400 was in cash, also suffered from loss of memory as to where some of the deposits came from.

There were many others of the same sort. Apparently the only man who has appeared before the investigators and who has not been unable to explain to his own satisfaction has been William F. Doyle, who appeared as attorney in cases before the board of standards and appeals, and who has admitted splitting fees. Doyle has steadfastly refused to disclose the persons with whom these fees were split in spite of the offer of the committee to give him immunity. Indeed, he went to jail for a short period rather than talk. It is really too bad that Dr. Doyle could not have suffered from the embarrassment of loss of memory that afflicted a number of the others. He did—but not quite so completely!

* * *

One other deserves mention here. For the past ten and one-half years James J. McCormick has been deputy city clerk in Manhattan, performing marriage ceremonies at a salary ranging from $5,000 to $8,500 a year. Between 1925 and 1931 McCormick deposited in his bank accounts $385,000 at the end of which time his balance was $257,000—most of this amount coming from "gifts" made by blushing bridegrooms after the ceremony. This is one man who cannot be forgiven on the grounds of coincidence or poor memory. It was not only dishonest but downright mean to take financial advantage of a man's weakest moment!

* * *

The Seabury Revue of 1932 is probably the best and least expensive show running on Broadway this season: huge audiences witness the performances daily, and since the act is changed almost every day, one can enjoy it over and over again. Yet the price of a season ticket, good for all performances, is less than a nickel! [1]

[1] As may be quickly ascertained by the simple if not scientific method of dividing the population of New York State by the cost of the Seabury investigation, approximately $500,000.

The Municipal Bond Market—Past, Present and Future

THE collapse (relatively moderate) of the market for municipal securities has directed attention to the necessity of sound financial administration

BY SANDERS SHANKS, JR. *Editor, the Bond Buyer*

OCTOBER, 1929, will be remembered for the crash in the stock market. October, 1931, marks the collapse of the municipal bond market and the beginning of a new era in state and municipal finance.

While there had been plenty of trouble spots in the municipal bond situation prior to last autumn—among which we might mention the Florida defaults, Chicago-Cook County financial troubles, Asheville-Buncombe County, North Carolina, Fall River, Massachusetts, and Cisco, Texas, defaults, Detroit's fiscal crisis, some embarrassing bank closings tying up public sinking funds and other deposits—there had been no general breakdown in the machinery furnishing long and short-term credit to municipalities. In fact, as recently as mid-September of last year, municipal bonds were in good demand at prices just under the highest level seen in over twenty years. Short-term money was in good supply at rates ranging from 1½ to 3 per cent.

MUNICIPALS JOIN PROCESSION DOWNWARD

The storm broke following England's suspension of gold payments. The collapse of the bond market carried the best municipals down along with all other securities. Bank credit, so far as dealers in bonds were concerned, dried up almost completely, which made it impossible for dealers to underwrite new issues and it was very soon realized that the banks were no more ready to lend money to cities on temporary loans than they were to finance the dealers' bond underwriting operations. During the month of October, the municipal business came to an almost complete stop. The aggregate par value of new bond issues brought out in that month during the preceding ten years was never less than $65,000,000 and in 1928 exceeded $173,000,000. In October, 1931, new issues amounted to $18,292,743!—and but few of these were placed through the customary channels of investment banking.

In the four months' period October, 1931, to January, 1932, state and municipal financing has been running at about 40 per cent of the average volume for the period 1920–1931 (if we exclude the $100,000,000 short-term New York City emergency corporate stock loan arranged in January).

Prices of both long and short-term municipal securities have, of course, suffered a disastrous drop during this period. In the spring of last year, some of the highest grade city bonds sold at the best prices recorded since as long ago as 1908. Using a group of 20

of the largest cities as a basis for a market price index, we find that at this high level the net interest return on the bonds of these cities averaged 3.74 per cent. Those same bonds, if sold today would have to be priced to yield 5 per cent or more. Assuming the bonds to have an average maturity of 20 years, the depreciation over a period of seven months amounts to a minimun of 15 points. And remember, this is what has happened to a group of *high grade* bonds. Plenty of instances of declines of 20 to 25 points on second and third-rate issues might be cited.

FLUCTUATION IN SHORT-TERM INTEREST RATES

Short-term interest rates have fluctuated even more violently. Prior to last October, cities were borrowing on tax anticipation paper maturing in less than a year at rates of less than 2 per cent. Here are a few examples of short-term municipal borrowing negotiated as recently as September, last: New York City, $20,000,000, 4 months notes at 1.45 per cent; Rochester, New York, $1,000,000, 6 months notes at 1.39 per cent; Syracuse, New York, $2,000,000, 4 months notes at 1.73 per cent; Worcester, Massachusetts (this is representative of financing by many cities in Massachusetts), 2⅙ months notes at 1.24 per cent. New York City is now paying 5¾ per cent. Most cities that are fortunate enough to be able to borrow in anticipation of taxes at all are paying 6 per cent, and the governor of Massachusetts recently suggested that the state be allowed to guarantee city notes in order to make them marketable!

It is clear that there has been a serious breakdown in the structure of municipal credit. For certain reasons, which may or may not be well-founded, bankers and investors are challenging the soundness of the theory that collection of taxes is, like only death, a certainty; and that, since municipal bonds are payable from taxes, they are prime investment securities, second only to federal government obligations.

BUYERS IN QUESTIONING MOOD

Today, the prospective buyer of a municipal bond is asking questions which a year ago many municipal bond specialists would not have been able to understand—let alone answer intelligently. Instead of considering whether or not a bond is "legal for savings banks," the buyer is now more interested in the city's tax collection record. Where he formerly gave great consideration to the tax-free status of the municipal bond income, now the inquiry is more apt to relate to budget deficits, how the city's bank deposits are secured, how much short-term financing will have to be arranged in the near future, or what steps have been taken to deflate operating expenses.

To understand this sudden apprehension over the ability of municipalities to carry their debt burdens (and that is really what it amounts to) it is necessary to consider, in the light of the vicious deflation of 1930 and 1931, the record of the past ten or twelve years. State and municipal debts have been increased tremendously, measured by any yard stick.

The net annual increase in the funded debt of the states and all municipalities (including a wide variety of special taxing districts) during this period is estimated at about $1,000,000,000. Along with the added burden of carrying and redeeming this debt, there has been a steady increase in the cost of operation (overhead) of local government. Until quite recently this had been looked upon with equanimity by taxpayers and by the

investors who have absorbed readily these billions of dollars worth of permanent improvement bonds and short-term notes. Confident that the country would continue to grow, that prosperity would endure indefinitely and, even conceding that cities were guilty of a certain amount of extravagance, graft and inefficient spending, it was believed that there was ample margin of safety in a tax-secured obligation, no matter what might happen.

Where prior to the World War, the municipal bond business had been one of the less important branches of the investment banking profession, in the last decade it became a major department, with many large banking or private banking institutions maintaining elaborate municipal bond departments to underwrite and distribute new issues on a wholesale and retail basis. In recent years it has been considered "normal" for the dealers operating in the New York bond market alone to carry "on their shelves" somewhere in the neighborhood of $150,000,000 of bonds.

FLORIDA WARNING IGNORED

In 1926, the collapse of the real estate boom in Florida and the municipal financial troubles of the cities and towns which followed were extremely disconcerting to holders of Florida bonds, but generally speaking this warning of what might happen in other sections of the country was ignored and the pace of debt making, except in Florida, was maintained. The Chicago-Cook County troubles were also considered to be the outgrowth of peculiar local conditions.

In the closing months of 1930, however, a brief, but alarming, disturbance in the securities and money markets caused many important buyers of municipal securities to take stock of conditions. The Fall River default occurred at this time; also the Asheville-Buncombe County trouble. The bank failures, resulting from the collapse of Caldwell & Co., Nashville investment banking firm, was seriously embarrassing to the state of Tennessee and a number of counties and cities in that state and elsewhere, and, in fact, had more or less to do with the Asheville default.

From that point on the municipal bond market became more and more a selective affair, with the spread between prices of the best grade and the second-grade bonds increasing to an abnormal extent. That the bonds of a comparatively few of the most highly regarded states, counties and cities sold at such high prices in 1931, was due to the investors' growing fear that municipal credit in general was not as sound as had been supposed up to that time.

This brings us down to the present, and it must be stated that the municipal bond market is today in a deplorable condition. In fact, there is virtually no market for new permanent improvement loans and the borrowing of money in anticipation of taxes is, as a Boston banker stated recently, "well-nigh an impossibility." Investors and bankers have adopted the attitude that the deflation of values has threatened the ability of municipalities to collect sufficient taxes to support their debts—which on the basis of deflated valuations of taxable property now appear to be far heavier than when they were incurred. Increases in tax delinquencies together with budget deficits resulting from unanticipated decrease in revenues and abnormal expenditures for emergency relief, justify the lenders' insistence that municipal borrowers take immediate steps to readjust their operating costs, clean up deficits accruing from past years and balance current budgets.

PRESENT SCRUTINY AN ULTIMATE SOURCE OF STRENGTH

There has probably been more publicity given to the financial condition of the cities of New York, Chicago, Philadelphia and Detroit in the last few months than in the preceding ten years. And, while the immediate result as reflected in bond market quotations is distinctly unpleasant, it is already apparent that the result will be to greatly strengthen the position of the securities of the very communities which are being subjected to the most thorough scrutiny. Further, it must be kept in mind that, as the country breaks loose from the grip of the current cycle of deflation and despondency, financial problems which now seem impossible of solution will rapidly disappear.

As a matter of fact, state and city bonds, on the basis of comparison with all other classes of securities, have not made a bad showing down to date. No state and, with one or two exceptions, no important county or city has defaulted on its debt service payments. Where such an eventuality has threatened, municipal authorities have displayed a willingness to take the steps necessary to meet the situation successfully. There is ample evidence that public authorities, taxpayers, bankers and investors are thoroughly aroused to the seriousness of the situation and have already initiated a policy of retrenchment in both current and capital expenditure budgets which recognizes the need both for the protection of the taxpayer against a confiscatory burden on his property and for the investor who has loaned his money to build a school house or pave the streets.

The Surplus That Made Milwaukee Famous

Is the widely advertised surplus fact or fiction?

BY PAULA LYNAGH *Citizen's Bureau of Milwaukee*

Literally a hundred editorials have recently been published extolling Milwaukee's financial administration. Uncle Sam looks amazed at a stein foaming with a "$4,000,000 surplus in the bank" in a *Detroit News* cartoon captioned "Milwaukee is Famous Again." A Boston newspaper goes so far as to give reasons why "Milwaukee had millions of cash and no indebtedness." Curiously enough in one of our home papers the convenience of multiple governments is demonstrated by publishing side by side in the January 20, 1932, issue one article stating, "The entire western world, not merely the United States, has its eyes on Milwaukee and is wondering by what miracle it has managed not only to show no deficit in municipal finances during 1931, but to come out of the year with a surplus in the banks." And in the next column, "County Seeks Another Loan. Supervisors Vote to Borrow $2,500,000; Relief Blamed."

A WELL GOVERNED CITY

Milwaukee's reputation of being a well governed city is warranted although:

The $4,000,000 "surplus" is really bond funds intended for projects which have been unavoidably delayed, and the $2,000,000 county borrowing to meet outdoor relief expenditures had no news value;

The amortization fund increased faster than expectations, but no comment is made that the debt it is to overtake increased still faster;

An independent government (metropolitan sewerage commission) rendering functions of which the city is the major beneficiary, has been created. This makes the city public debt appear unusually low;

Present total debt charges of the city and county are not typical because the retirement of the $17,300,000 bonds for the sewage disposal system does not begin until 1933;

The city has financed its improvements extensively on the pay-as-you-go principle largely because it had used up its bonding capacity; and

The property tax rate is low because the income tax is the equivalent of $4.30 a thousand property tax.

One of the characteristics of the city is the comparative permanence of its administration. Daniel Hoan served as city attorney from 1910 through 1915 and has been mayor since 1916.

The city comptroller has been continuously in office since 1912, the city treasurer since 1916, and the city attorney since 1918. The same alderman has been the president of the city council since 1912. There have been only two chiefs of police appointed in forty-two years.

The two competing parties are Socialist and "Anti-Socialist," known as Non-partisan. Both have little or no interrelation with state or national politics. The municipal housekeeping has not been burdened for many years now with the usual parasitism which is the National Republican or National Democratic gift to the cities in which either labor exchange flourishes.

$2,000,000 COUNTY LOAN

All of the recent publicity refers to the city government's finances. But a picture of Milwaukee financial conditions is not afforded by merely scrutinizing "income and outgo" of the city of Milwaukee. The county government has an "income and outgo" also; and Milwaukee is 80 per cent of its county and also 81 per cent of its Metropolitan Sewerage Area. The greatest single recent government expense increase which local governments have to shoulder is that which arises out of the depression. And in this community all forms of charity are administered by the county government. The county's 1931 cost for all forms of public outdoor relief has increased 550 per cent over that of 1928 causing the country to borrow $2,000,000 in 1931 which will be recouped from the 1932 property tax levy. On February 1, 1932, one-seventh of all the families in Milwaukee County were being maintained by just the Outdoor Relief Department indicated in the subjoined tabulation.

During this period "made work" (relief) projects of the city administration amounted to only $140,500 in 1930 and $421,876 in 1931. These expenditures have been offset, however, by a sharp decline in the total expenditures for those permanent improvements which have involved the use of special assessments. Neither the specially benefited taxpayer, through special assessment, nor the city as a whole through the general fund, has been obliged to foot as large a permanent improvement bill as during the more spacious and "prosperous" times. (The connection between contraction of this activity and unemployment is obvious). By and large, the increased expenditures for public relief in Milwaukee County have been borne during 1930 and 1931 by the property taxpayer. In 1932 a larger proportion of such charges will be borne by an income tax. Wisconsin's special session of the state legislature, after a two-month communion with nature, doubled the normal individual tax on incomes earned in 1931 to be devoted to 1932 relief purposes. This income tax measure includes in taxable income the dividends of Wisconsin corporations previously exempt, and omits any consideration of capital gains or losses.

MILWAUKEE COUNTY OUTDOOR AND INSTITUTIONAL RELIEF 1928 COMPARED WITH 1931
(1931 ten months actual, two months estimated)

	1928	1931
Outdoor relief		
Outdoor relief department	$176,963	$2,620,000
Soldiers' relief commission	33,783	193,566
Mothers' aid	288,123	589,000
Blind pensions	51,895	60,250
Old age assistance	.....	130,249
Total outdoor relief	$550,764	$3,593,065
Institutions	2,321,825	2,687,024
Total relief	$2,872,589	$6,280,089

THE FAMOUS $4,000,000 CASH BALANCE

The city had on December 31, 1931, a cash balance of $3,400,000 ($4,000,000 had been estimated in the press). The city has in progress since 1920 a major down-town street widening project. Three adverse Wisconsin supreme court decisions, beginning in 1925, have defeated the city's attempt to levy any special assessments for this work. Because the city lacks any assurance that it possesses the power to levy special assessments for street widenings the city comptroller has refused for almost four years to countersign the release of bond proceeds and tax levies until an adequate special assessment law is available. This aggregate of funds, which the comptroller is safeguarding, totaled $2,575,000 a year ago. Another $2,350,000 from bond proceeds intended for a viaduct construction is available to pay current bills because of a legal controversy about "bids" for the work.

This totals $4,925,000 to which can be added approximately $700,000 prepaid taxes, upon which, by the way, the payer draws interest at two per cent from time of payment until the beginning of the fiscal year and obtains certain publicity. Further items are the usual departmental surpluses, but since these substantially remain unchanged from year to year, they are not of the same importance as those listed above. Enough has been said to make clear from what sources and by what circumstances Milwaukee had $3,400,000 cash in the city treasury on New Year's day.

AMORTIZATION FUND

The amortization fund was created in 1923. It is a trust fund built up from all interest collected on unpaid paving special assessments (payable in six annual installments with six per cent annual interest charge) and at least one-third of interest earnings such as on bank deposits, extended taxes, etc. The fund assets totaled $3,600,000 as of January 1, 1932, and was invested entirely in city of Milwaukee bonds. These bonds are in no way amortized. The taxpayer continues to pay the annual interest and principal charges. The interest earned by the bonds in the fund comprises on January 1, 1932, 16 per cent of the total fund assets. When the fund equals three-fourths of the debt outstanding the law provides that: "three-fourths of the annual interest on said fund shall be applied to pay the interest on any outstanding bonds and to assume new bond issues of such city, or as the public debt commission may from time to time with approval of the common council apply the same for any purpose for which municipal bonds may be legally issued." It is a trust fund in that the principal can never be used.

When the plan was inaugurated, its proponents estimated that the city would repurchase all its outstanding bonds by 1963, *i.e.*, in a period of forty years. The fund's size after eight years has reached the expected growth of a decade. But by 1928 the debt amounted to the estimated 1973 fund accumulation. In the same year that the amortization fund began operation an annexation division was authorized and the city's area has subsequently been increased 60 per cent, carrying with it a 35 per cent increase in assessed valuation. The expanding assessed valuation did not provide rapidly enough for the issue of additional bonds. Therefore, beginning with 1926, the basis of the computation of the debt margin was changed from five per cent of the assessed valuation *five-year* average, to five per cent of the *current* assessed valuation.

PUBLIC DEBT COMPARISON COMPLICATED

The city council and board of school directors public indebtedness amounting to $46,000,000 is frequently cited as representing the city's indebtedness without any recognition being given to the city's share of the debt of the county and metropolitan sewerage area. From 1914 to 1921 the city council collected by means of a one-mill tax $4,000,000 from general property tax levies, and issued $5,500,000 of bonds for the construction of the sewage disposal plant and intercepting sewers. The burden was becoming so constrictive that in 1921 the legislature was persuaded to create an independent government known as the city sewerage commission with jurisdiction over the sewage disposal plant and of all parts of the system lying within the city. A metropolitan sewerage commission was also created with jurisdiction over that part of the system lying outside the limits of the city of Milwaukee. The city's bonded debt is therefore:

Jurisdictions in city area	January 1, 1932 Indebtedness	
	Amount	Per cent
City council and school board	$46,380,000	64.9
City sewerage commission	17,319,192	24.2
City's share of county debt	7,837,072	10.9
	$71,536,264	100.0

Since 1921 the metropolitan sewerage commission has issued $13,500,000 in bonds for work done in the city of Milwaukee. The city council was not only able to "shed" a financial embarrassing function, but the entire metropolitan sewerage district (of which the city of Milwaukee comprises 81 per cent) will repay the city its pre-1922 investment of $9,500,000 plus 5 per cent interest. The city of Milwaukee's debt (city, school, county and sewerage commission) has increased from $24,826,433 in 1921 to $71,536,264 as of January 1, 1932, representing 188 per cent.

DEBT MARGIN ALL USED

During the last ten years, the city and school administrations have authorized all the bonds legally permissible, while the decade of 1912–1921 inclusive only 32 per cent of the debt margin was availed of. Frederick L. Bird's study, *The Present Financial Status of 135 Cities in the U. S. and Canada*, records Milwaukee as having the least unused margin of bonded debt capacity in 1930 ($276,339) of any city having a population of 100,000 or more. In 1932 the city council and school board will be able to issue only $2,300,000 of bonds. The ability to issue bonds has been reduced by the transference in 1929 of the power and light companies' assessment from localities to the state, and the exemption of automobiles in 1931 from the personal property assessment. The county on the other hand, had a debt margin of $47,116,680 on November 1, 1931.

PAY-AS-YOU-GO PRACTICED

Both the city and the county have used extensively the principle of paying for permanent improvements from current taxes. Bonds financed 47 per cent of the $138,100,000, 1921–1930 inclusive permanent improvements constructed in behalf of the city by the city council, board of school directors, local board of industrial education, sewerage commission, and county board of supervisors' jurisdictions.

Bond proceeds financed 44.8 per cent of the city council and school board's

$109,000,000 of permanent improvement costs in the last ten years (1921–1930 inclusive) general taxes financed 21.8 per cent, special assessments 23.2 per cent, and water revenues 10.2 per cent. A tax levy limited by the state to a maximum of one mill, has been levied since 1915 for permanent pavements. Forty per cent of the $17,500,000 school construction costs in the last ten years have been financed from current taxes. A referendum in 1928 approved a one mill tax for school construction to be levied each of five years. Under normal business conditions this mill tax would probably have been extended in 1933. As it is, the city council will no doubt authorize tax levies for building purposes sporadically as it did prior to 1928. Forty-one per cent of the $10,000,000 of park and playground capital costs during 1921 to 1930 inclusively were financed from cash.

The county's $20,139,100 permanent improvements completed in the ten years were financed 18.5 per cent from bond proceeds, 59 per cent from general taxes, and 22.5 per cent from state highway aids. The only bonds issued in the ten years were $6,600,000 for the new court house. In 1923 a county building program was mapped out and a resolution passed providing that $500,000 a year from current tax levies together with departmental surpluses be set aside each year into a building fund. Because the 1923 building program was practically completed, combined with the pressure of outdoor relief expenditures, this practice was discontinued in 1931.

The $13,500,000 sewerage disposal system construction work in behalf of the city of Milwaukee which took place in the decade were financed entirely from bond proceeds.

DEBT CHARGES WILL INCREASE SHARPLY

At the present time 20.7 per cent of the city's property tax levy for city, school, county, and state purposes are to defray debt charges. This low percentage for debt charges is due in part to the fact that the first payment on the retirement of the $17,300,000 sewage disposal system bonds (city's share) does not take place until 1933. These bonds, representing one-fourth of the public debt against city property were issued at various times with a twenty-year life but to be retired in ten years, at the present time they have an average maturity of fifteen and one-half years. The amount of principal to be retired each year will increase rapidly and reach a maximum in 1941 at which time it will approximate the 1930 interest charges for the entire debt under the city council and school board jurisdictions.

INCOME TAX EQUIVALENT TO $4.30 PROPERTY TAX

The city of Milwaukee's property tax rate for city, school, county, and state purposes has ranked very consistently about 13th among the 25 largest cities for a number of years. It is generally overlooked, however, that the city's receipts from the income tax bulks a larger proportion of the total revenue, as reported by the bureau of census in its *Financial Statistics of Cities*, than any other city having a population of more than 300,000. In 1930 the income tax (city's, and city's share of the county receipts) was the equivalent of a $4.30 a thousand dollars assessed valuation tax on city property. It was 11.5 per cent of the total revenues for city, school, and county purposes. In 1930 residents of the city paid in income taxes an amount equal to 25 per cent of their property tax.

Shanghai's International Municipal Government

THE municipal government of the International Settlement is not the least interesting phase of one of the world's danger spots

BY HAROLD E. JONES

Princeton University

THE municipal government of the International Settlement of Shanghai, the focal point of China's commerce, banking and population, is unique. Its legal status is unusual; it has no courts to enforce its laws, but exercises military and police powers. It must also cope with strange problems and perform extraordinary functions in the administration of the area under its jurisdiction, in addition to maintaining semi-diplomatic relations with two other municipal entities.

Shanghai consists of three areas administered by separate authorities, each under its own laws. They are the International Settlement, the French Concession, administered by the French consul-general who possesses full veto powers and is assisted by an advisory "mixed" council; and the Chinese area, known as the Municipality of Greater Shanghai, which has a mayor and chiefs of certain administrative bureaus, appointed by the National Government, and functioning under the direct control of the Administrative Yuan at Nanking.

The Chinese area surrounds the International Settlement and the French Concession, which lie adjacent to each other on the western bank of the Whangpoo river. A considerable area of the eastern bank is also included in Greater Shanghai, which is the largest of the three areas and contains a population of more than twice the total population of the Settlement and the Concession. The Settlement includes the central business area and the foreign shopping district of Shanghai and most of the modern factories. The wharves and pontoons are mostly on the six-mile river front of the Settlement.

The urban portions of the Chinese area consist of the old Chinese city, situated south of the French Concession on the same bank of the river; Nantao, just south of the Chinese city; and Chapei, north of the Settlement. Apart from a few creeks, the boundaries between the different areas are, in normal times, mere lines on the map.

The extent and population of these areas may be learned from the tables on the following page.

THE ELECTIVE MUNICIPAL COUNCIL

The administration of the International Settlement is in the hands of an elective municipal council of fourteen members, five of whom are British, five Chinese, two Japanese and two American. The so-called "mayor" of the Settlement, Stirling Fessenden, is an American, who had been chairman of the council since 1923 and was in 1929

	International Settlement	French Concession	Greater Shanghai	Total
Area, in sq. miles	8 2/3	3.94	320	332
Population	*998,362*	*434,220*	*1,689,100*	*3,121,682*
Foreign	26,965	12,335	9,790	49,090
Chinese	971,397	421,885	1,679,310	3,072,592
Houses	*80,546*	*39,231*		
Foreign-style	6,184	5,338		
Chinese-style	74,362	33,893		
Developed river frontage, in feet	31,875	3,800	74,000	109,675

Foreign Population by Nationalities, 1930 [1]

Japanese	12,788	318	5,690	18,796
British	4,606	2,228	1,615	8,449
Russians	3,113	3,879	374	7,336
Americans	1,145	1,541	463	3,149
British Indians	1,758	....	84	1,842
All others	3,555	4,379	1,564	9,518

[1] All figures in this article are as of December 31, 1930, unless noted to the contrary.

appointed director-general. His appointment was part of the program for renovating the administration in accord with the new spirit of coöperation with the Chinese.

Although Shanghai was one of five ports in China opened to foreign traders in 1842, the Settlement did not have a government until 1854. In this year the foreign land renters elected three councilmen and adopted the Land Regulations, which already had received the assent of the British and American ministers and the Taot'ai through exchange of notes. The first meeting was held under the supervision of the British, French and American consuls. The Land Regulations, which form the constitution of the International Settlement, were largely revised in 1866 by the addition of numerous by-laws. The authority of the government rests upon the original agreement of the three powers. The Settlement lives today under laws dating mainly from 1866 when the Settlement was less than one-third its present area and when the foreign population numbered approximately 2,200 and the Chinese 90,000. Today there are 26,965 foreigners and 971,397 Chinese crowded into an area of less than nine square miles.

The Land Regulations vest in the present foreign ratepayers direct legislative powers, such as the powers to approve the budget, review expenditures, impose taxes, and make laws.

In addition to its administrative duties the municipal council has limited legislative powers. It can enact supplementary regulations (ordinances) to the by-laws. By-laws, however, must be ratified by a majority of a quorum of the foreign ratepayers, who act in a special meeting called for the purpose, and then must be sent to the consular body for approval. (The

Chinese ratepayers have no share in legislation except through their elected members on the council.)

At their annual meeting, which does not require a quorum, the foreign ratepayers pass on the council's expenditures for the preceding year, adopt the current budget and levy taxes. In the past, the requirement that the council's financial proposals must be approved by the annual meeting, and the initiative and referendum powers over by-laws possessed by the ratepayers have turned light on questionable policies of the council. It is doubtful whether the present meetings, which nearly 3,000 persons are qualified to attend, perform their legislative functions satisfactorily. The attendance varies widely. Except when important questions are known to be coming up, the annual meeting may represent a casual and insignificant minority.

The franchise is limited to foreigners who either own considerable property under foreign title, pay a substantial rental assessment, or vote in a representative capacity on behalf of some foreign firm. There is plural voting. In 1931 2,965 qualified voters had 3,243 votes.

The Chinese members of the council and of the committees are elected by the Chinese Ratepayers' Associaton. A Chinese is qualified as a ratepayer upon the payment of lower assessments than the foreigners, or by owning land under any title.

POWERS OF FOREIGN DIPLOMATS

The municipal council is singularly dependent upon the members of the consular body, who, under responsibility to their ministers, serve as the official means of communication between the council and the Chinese authorities. Not only do the Land Regulations impose upon the consuls certain duties with regard to the fixing of dates of elections and the holding of ratepayers' meetings, but they also require consent of a majority of the consuls for the passage of municipal by-laws, which are then referred to Chinese authorities. Thus the municipal council is given extraterritorial status. It is not subject to the jurisdiction of the Chinese courts. Questions raised by foreigners and Chinese as to the nature and powers exercisable by the council under the Land Regulations can only be decided by a special court—the Court of Foreign Consuls.

The municipal council, however, has no courts of its own. But as the only police authority in the Settlement, and in any attempt to establish a civil claim, it is the body responsible for initiating in the public interest prosecutions in the court having jurisdiction over the defendant. Proceedings are taken against the Chinese, or foreigners not possessing extraterritorial rights, in the Chinese courts, and against foreigners possessing extraterritorial rights, in the appropriate extraterritorial court.

In addition to its general municipal activities, the council is concerned with the defense and the armed neutrality of the Settlement, and also the exclusion of invading forces—powers which exceed the normal police power. To this end is organized the Shanghai Volunteer Corps, which, besides 1,243 active and 364 reserve volunteers drawn from twenty nationalities including the Chinese, has attached to it 250 White Russians in two companies employed on a full-time basis. The volunteers, besides being called upon to join the police in times of internal disorder, combine with the regular military forces of the Powers in defense of the Settlement.

The municipal council exercises the sole police power over the Settlement to the exclusion of the French and

Chinese police, and also has jurisdiction over 48 miles of roads belonging to the council outside the Settlement.

TAXATION

With the exception of customs duties and a land tax on property held under the old Chinese titles, no Chinese taxes can be collected within the Settlement. Land held outright by foreigners or in trusteeship for Chinese under consular title deeds obtained through registration at the land office of the proper consulate is subject to a tax of one-eighth of one per cent. The Settlement government, however, obtains most of its revenue from a levy amounting to 16 per cent for foreigners and 14 per cent for Chinese upon the annual rental payments made individually. In 1930 foreigners paid Taels 2,806,217 and the Chinese, Taels 3,081,520, in rental taxes. In 1929 the total rental tax came to approximately $2,875,300 and the land tax to $1,675,000 of a total of ordinary receipts of $7,109,800.

License fees form the third important item of the Settlement's ordinary income. The total ordinary expenditure for an average year is between $5,000,000 and $6,000,000. Comparative statistics as to the rates of taxation in important British cities show that the Settlement community receives, upon a low rate, a wide range of services for its "tax tael."

The municipal council operates its own water works. In 1929 it sold the electricity department to interests representing American capital, and in 1930 turned over the telephone system to the International Telephone and Telegraph Company.

EXPENDITURES

Approximately one-third of the ordinary public revenue is expended for police protection, while only a little less amount goes for public works, under which are included 225 miles of roads, sewage disposal, the Settlement's excellent parks, etc. Public health is the third important item of expenditure, which is followed by education. With European influence strong, it is not surprising that the annual cost of a city band and concert orchestra should equal the cost of maintaining the fire brigade. An item that would be anomaly in the expenditures of an American city is the charge appearing for the study of Chinese by the foreign staff and for Chinese translations.

The council has on its permanent payroll 2,550 foreigners and 7,600 Chinese. The principal administrative officials, all foreigners, are the director-general, secretary, commissioner and deputy-commissioner of police, superintendent of goals, commissioner of public health, commissioner of public works, treasurer and comptroller, and commissioner of revenue. The commandant of the Volunteer Corps is an officer of the British army detailed to the council by his government.

POLICE, HEALTH, FIRE PROTECTION

The police force has been almost doubled since 1925, due to the great ingress of Chinese into the Shanghai area from "up country," the growing number of motor vehicles, the increase of armed kidnappings and robberies, and the demands of the Chinese ratepayers for added protection. The work of crime prevention and surveillance is extremely difficult. The areas policed by each of the three municipal police forces are densely populated and without natural boundaries. Criminal gangs operate in one municipality and take refuge in another. While the forces do coöperate, full coöperation is impossible because of the fundamental differences in ideas of police administration. Mendicancy is one of the many troublesome problems.

Pasadena Uses the Recall

A RESENTFUL electorate in a California city turns the whole board of city directors out of office

BY WILLIAM B. MUNRO *Pasadena, Calif.*

THE recall of an entire city council is an unusual occurrence in American municipal politics. Voters, as a rule, are disinclined to eject a whole city government from office unless the provocation is strong. That is one reason, among others, why the recent general ouster in Pasadena deserves to be regarded as a phenomenon of more than purely local interest or significance. It sheds some light upon the merits and shortcomings of the recall procedure as well as upon the methods of arousing a municipal electorate. In this instance the people rebuked their representatives with a voice which left no room for diversity of opinion. They gave themselves a new deal, which is what some other cities may do with profit to themselves from time to time.

Pasadena is a city of homes, with few industries. Its population is somewhat under one hundred thousand. Geographically the city belongs to the group of satellites which encircle Los Angeles, but politically moves in an orbit of its own. A community with high standards and sound governmental traditions, Pasadena has steadfastly maintained a high level of efficiency in all administrative departments. No city of the United States has been more fortunate in the general excellence of municipal government during the past twenty years, or more nearly immune from the befoulment of partisan politics. This record has served to build up in the minds of Pasadenans a deep-seated civic pride which quickly recoils against the factional squabbling that so many other American cities tolerate as a matter of course.

HOW THE TROUBLE BEGAN

Some years ago Pasadena adopted the city manager form of government. The city charter provides for a city council, which is called the board of city directors, made up of seven members. These directors are elected by the city at large, but with the provision that one of them must be chosen from each of the seven districts into which the municipality is divided. The term of office is four years, but with an arrangement whereby approximately half the directors are elected biennially. As a body, this board of directors has power to make the city ordinances, to adopt the municipal budget, to appoint a city manager who holds office during the board's pleasure, and to determine all matters of general policy. As individuals, the directors are not assigned to the headship of departments and have no administrative functions.

The board elects its own chairman and the charter makes no provision

for the title of mayor. The city manager is the chief executive officer and as such is entrusted with the supervision of the administrative mechanism, with the power to appoint and remove his own subordinates. Until 1931 the spirit of the charter was honored by a relatively strict observance, and the city manager was accorded a reasonably free hand in the performance of his duties.

At the regular municipal election of last May, however, four new members were elected to the board. These newcomers had made various charges against the incumbent city manager and were pledged to get rid of him. In addition they promised to stir things up generally. The people of the city were not clamoring for a change and the new directors owed their election to the fact that only a small portion of the electorate went to the polls. Less than 20 per cent of the registered vote was cast. But this electoral apathy, besides being unusual for Pasadena, soon brought its traditional penalty, and things began to happen at the city hall with drum-fire rapidity.

THE CITY CHANGES MANAGERS

First of all the city manager was induced to resign. No malfeasance was proved against him personally, but he was shown to have made various errors of judgment and to have authorized some payments which the city law department subsequently ruled to be illegal. One of his subordinates, moreover, was proved to have been guilty of padding the city payroll. So the manager resigned under pressure. But before departing from office he fired a parting shot by dismissing the city engineer. He also stirred the ire of his opponents by discharging an employee of the comptroller's office who had been supplying the newly-elected directors with inside information. Demands were made that this employee be reinstated, but a majority of the board declined to comply. Then the factional pyrotechnics began.

This bitterness showed itself when the board turned its attention to the task of securing a new city manager. By the terms of the Pasadena city charter the appointment of a new manager requires the votes of five of the seven directors. Three members of the board promptly declared for one candidate and announced through their spokesman that they would keep voting for him "till hell freezes over." As the other four directors declined to support this candidate on any condition the result was a hopeless deadlock.

Ballot after ballot was taken, day after day. Members of the board lost their tempers and turned bedlam loose in the council chamber. The newspaper accounts of the daily fracas sounded like communiqués from a battle front. One director announced to the newspaper reporters that he was carrying a blackjack for use if need arose. Ultimately the minority's candidate for the city managership withdrew from the race and an agreement on the majority's choice was then secured. The appointee had been serving as city manager in a neighboring municipality and possessed excellent qualifications for the post. His selection was fortunate in all respects and the minority directors pledged him their support.

THE COMBAT THICKENS

With the selection of a new manager out of the way it was confidently hoped that some approach to harmony would now prevail at the board meetings, but unhappily nothing of the kind came to pass. The minority was still determined that those officials who had been dismissed by the old administration should be reinstated by the newly-

appointed city manager who quite naturally did not desire to get mixed in a feud that was not of his own making. Delegations of trouble-makers, abetted by the minority directors, came to the board meetings with an insistent demand that the new city manager be ordered to make the reinstatements against his own will and judgment, thus disregarding both the letter and the spirit of the city charter. These delegations, with crowds of spectators, thronged the board-chamber, entering into arguments with majority directors and turning the place into a Babel while the chairman pounded his gavel in a vain attempt to squeeze order of the chaos. Urgent matters of great importance lay on the table while the wrangle went on, meeting after meeting.

A MAYOR BY ORDINANCE

Meanwhile the chairman of the board proceeded to let himself be named mayor. Inasmuch as the city charter contains no provision for any such office, no powers could be bestowed upon it; but an ordinance was passed conferring the title, and His Honor proceeded to live up to it. His intentions were good and his industry prodigious. All day and every day this unremunerated first citizen of Pasadena busied himself at the city hall, earning for himself the Shakespearean tribute:

> O, good old man, how well in thee appears
> The constant service of this antique world,
> When service sweat for duty, not for meed!
> Thou are not for the fashion of these times,
> Where none will sweat but for promotion.

But public sentiment did not greatly appreciate this gratuitous sweating outside the bounds of the city charter. It resented the assumption of the mayoral title and the activities which went with it, especially since some of the latter were thought to be inspired by the desire to build up a local machine for use in state elections.

SIDE-CORRIDOR POLITICS

Not to be outdone in any usurpation of managerial functions, moreover, one of the minority directors decided to set up for himself regular headquarters at the city hall. Having no right to the use of a regular office-room in the building, he homesteaded the end of an upstairs corridor and placed his desk therein. There he sat in state while favor-seekers of all varieties formed a queue down the hallway. Soon the place became a sort of Adullam's Cave, for as it is written in the Book of Samuel, "Everyone that was in distress, and everyone that was in debt, and everyone that was discontented gathered themselves unto him and he became a captain over them."

Here was a new wrinkle in the art of helping a city manager govern his city. Lobbyists have traditionally functioned in the side-corridors, and aldermen have been known to whisper in darkened hallways, but communities with the city manager form of government have been almost entirely free from such troublers in Israel. The other directors should have put a speedy end to this travesty but they let it continue without interference.

Under such conditions the city manager soon found himself divested of the initiative in city administration that was supposed to be his. Business came before the board without his advice or consent, sometimes even without his knowledge. Occasionally, at meetings, some of the directors had so many projects to present, and so much to say about them, that the items placed on the agenda by the city manager were never reached at all. Gradually the people of the city awoke to the fact that they no longer had city manager government in anything but name. A

mayor and a board of aldermen, both of them functioning in the good old-fashioned way, were getting things right into their own hands. Given a fair chance and a little time they might anchor themselves and their methods beyond much chance of dislodgment, for the Pasadena charter contains no civil service provisions. So it seemed essential that those directors who were creating the most trouble with their corridor politics should be ejected from office without delay by means of the recall procedure.

DIFFICULTIES OF THE RECALL

But this was easier to say than to do. Two or three members of the board had been trying to promote harmony and get the city's business efficiently done. They had protested against the incessant turmoil and had tried to bring the other directors into agreement on various urgent questions of municipal policy, such as the matter of developing a new source of water supply. Should these directors be recalled along with the rest, or should an endeavor be made to single out the ones who were most at fault? The former plan would inevitably seem unjust while the latter would give a recall election the appearance of being a factional fight.

Another practical difficulty was presented by the charter provisions relating to recall signatures. These provisions required that a recall petition, in order to be valid, must be signed by qualified voters numbering at least 25 per cent of the vote cast at the last municipal election. The city's law department ruled that there must be a separate petition for each director whose recall was sought, that is, seven petitions in order to secure an election on the recall of the whole board. This would require at least eighteen thousand individual signatures—no small undertaking, as can easily be imagined.

A CIVIC ORGANIZATION INTERVENES

Now it happened that shortly after the municipal election of May, 1931, a small group of citizens had gathered to discuss the municipal situation. More especially they were concerned over the lack of public interest shown in the campaign which had just come to a close. It was their feeling that some kind of citizens' organization should be formed to stimulate the interest of the electorate by monthly discussions, and likewise to help bring out the vote on election day as well as to keep a sharp eye on current happenings at the city hall. Steps were therefore taken to form such an organization by inviting a widely-selected list of men and women to constitute its membership. These came together, elected their officers, decided that the organization should be called "The Pasadena Association," and adopted a general program. The objectives of the association, as set forth in this program, were to "promote economy and efficiency," to assist in bringing out the vote at municipal elections, to promote public discussion of major issues, to support capable candidates for office, to encourage them in constructive work, and in general to do what an effective civic organization is supposed to do but too often does not.

In a very short space of time the Pasadena Association drew into its membership a large group of men and women from all sections of the city and from every element in it. Efforts were put forth to make the membership broadly representative and these efforts were conspicuously successful. No large group so worthy to be regarded as a typical cross-section of the whole community had ever been organized in Pasadena before. Most reform organizations in American cities merely reflect the sentiment of a

small constituency. Their numerical strength is often negligible. They have little or no contact with the bulk of the electorate. But this one was different. It contained members from every walk of life with the single exception of public officeholders and representatives of the press. These were intentionally omitted from membership as likely to find themselves embarrassed by some action which the Association might later take.

BUILDING A PRECINCT ORGANIZATION

The Pasadena Association was not organized to undertake the recall of anybody. At its inception there was no talk of a recall election because no reason for ousting anyone had then arisen. The association's first move was to build up machinery which would ensure a full expression of the popular mind at a forthcoming bond-issue election. The precincts were organized, especially by committees of women, and on the day of this bond election a notable showing was made. Nearly 50 per cent of the registered vote was polled, which was an unusually high percentage for a special election on a relatively non-controversial issue. For this outcome the credit belonged to the precinct committees of the association, and particularly to the women who did most of the work on these committees. The experience demonstrated that no Pasadena election need go by default if adequate methods of organization were utilized.

PASADENA ASSOCIATION ACTS

Meanwhile the friends of both factions in the board of city directors began to talk recall. It was evident that some move in this direction would be made, sooner or later, and the Pasadena Association held a special meeting of its membership to discuss the matter. The pros and cons of the question were canvassed without heat or personalities. One speaker after another expressed the conviction that although there were several worthy men on the board of city directors, the board as a whole was so constituted that it would never function satisfactorily. To apportion the blame among individual members did not seem practicable, nor would it serve any purpose. The charges and counter-charges of each group against the other were so tangled as to defy unravelling. To institute recall proceedings against some of the board, and not against the others, would merely intensify the factional quarrel and draw the Pasadena Association into it. Hence the organization decided, by an overwhelming vote of its membership, to make the recall campaign a clean-slate affair. Its officers were directed to find candidates, to procure the necessary signatures on recall petitions, and to conduct the campaign.

Getting a list of seven satisfactory candidates proved to be no simple task, but in the course of a few weeks it was accomplished. Every man on the list came into the fight reluctantly and at personal sacrifice. To all of them the appeal was made on a basis of civic duty. The association unanimously endorsed them at a large and enthusiastic meeting of its membership, asking from them no pledge but that of giving the city manager a chance to do his work without unreasonable interference.

Then the recall signatures were gathered, partly by a house-to-house canvass and partly by placing the petitions in stores and other business establishments. Most of this work was done by volunteers. The petitions were promptly filed, checked up, and found to be sufficient by a wide margin. After the city clerk's certification of the petitions had been made, the direc-

tors proceeded to fix the date of the recall election for the Monday after Christmas, this being the latest date possible under the charter and a very inconvenient one for everybody but themselves.

In most city charters which permit the use of the recall it is provided that the recall petitions shall also nominate the opposing candidates. This is not the case in the Pasadena charter, hence it became necessary to procure signatures on separate nomination papers. It also made possible the nomination of additional candidates, and the friends of the minority directors proceeded to complete their slate by nominating such candidates for three of the districts which were represented by majority directors. This made the contest a three-cornered one as respects some of the districts.

THE RECALL SUCCEEDS

The weeks immediately preceding the Christmas holidays do not constitute a good time for electioneering, in Pasadena or anywhere else. Nevertheless, the campaign was a lively one, and on the whole it was conducted in a dignified way. Perhaps its most notable feature was the thoroughness with which the Pasadena Association and its new ally, the Citizens' Recall Committee, were able to perfect their organization in the 141 precincts of the city. This work was not done by experienced politicians but, for the most part, by men and women whose experience had been in social welfare activities. They were workers who knew the art of card-cataloguing and realized the importance of careful attention to minor details. Their methods of operation deserve the attention of municipal organizations in other communities.

First, the voters in each precinct were divided into five or six units, and each unit was entrusted to a precinct worker, usually a woman. More than 750 precinct workers were recruited for this purpose. Each received a little book giving the names and telephone numbers of the voters in her unit. A master book, with similar information was provided for each precinct captain. During the morning of election day these workers were directed to contact their lists of voters by telephone or by personal call in homes where there were no telephones. These calls were made irrespective of the voter's probable attitude at the polls.

Supplementing these precinct workers, however, was a follow-up organization composed mainly of men, about 400 of them. This body swung into action about noon. In each precinct they checked the already-polled vote against the names which had been signed to the recall petitions and to the nomination papers of the association's candidates. Then they concentrated on such of these voters as had not come to the polls. At 1:30 P.M. and again at 4:30 they rechecked the vote and reported to precinct headquarters where telephones were kept busy and where automobiles were stationed for the purpose of ferreting out the stay-at-homes.

Despite a heavy rainstorm which continued throughout the entire election day, this machinery functioned with amazing effectiveness. The total vote was more than 50 per cent above that polled at the last municipal election. As for the outcome, it was a landslide. The entire seven candidates of the Pasadena Association were elected by large majorities. Every member of the old board was defeated in every district of the city, irrespective of the faction to which he belonged.

SOME LESSONS OF THE EPISODE

The episode carries its lessons. One of them is the unreadiness of the aver-

age voter to tolerate more than a certain amount of discordance, dissension, bickering and squabble on the part of those whom he has chosen to be his representatives. The racket gets on his nerves after a while. There is, of course, an element in every community which gets a great thrill out of aldermanic spats, but it is by no means so numerous as the politicians imagine. The backbone of the American municipal electorate is made up of men and women who have a sense of civic decency. They will rarely vote their approval of scrimmage government when the issue is fairly presented to them as it was in this instance. Nor will they scruple to make much distinction between those who are to blame and those who are not. It was unfortunate that some upright and well-intentioned officials had to be ousted in this case, but the voters wanted a new deal and sacrificed them to that desire.

A second lesson lay in the disclosure of the popularity which the city manager form of government possesses in the minds of the voters. The fundamental issue in this election was not the cessation of inharmony among the directors but the preservation of the managerial plan. Rightly or wrongly a great many Pasadena voters believed that an attempt was being made to scuttle that plan, and they resented it. However cordially the politicians may dislike it, the city manager form of government appears to be approved by the silent voters, especially in the residential type of American city.

ANTI-RECALL PHILOSOPHY

Attempts were made to becloud the issue, of course, and the Pasadena campaign drew out some interesting tidbits of anti-recall philosophy. One was the argument that the people should never recall a whole city council but only a part of it, because continuity is an important desideratum in public office. Another contention was that officeholders should not be recalled for inharmony or incompetence but only for outright malfeasance or corruption. Considerable opposition to the recall came from one influential quarter on the ground that its success would "place a stigma on the recalled directors for the rest of their lives." In the view of the outcome one can hardly look upon this oft-reiterated contention as having done a service to the directors concerned. One vehement patriot took the stump to proclaim that the recall is nothing but an "un-American, undemocratic, unethical device anyhow." This was going a long way, in view of the fact that the recall is a native son of California, having been born in the Los Angeles city charter of 1902. And as in all such campaigns there were innuendoes about "sinister influences" behind the recall movement and the attempt of vested interests to get control of the city in order to thwart public ownership of the utilities. None of this propaganda seemed to get very far with the voters.

THE WOMEN DID IT

Another lesson of the upset was provided by the hundreds of women workers who were largely instrumental in bringing it about. They showed a skill and persistence which argues that women ought to replace men in considerable degree when municipal election campaigns are being planned and fought. Women have a very acute sense of what is running in the minds of the populace. To a much greater extent than the logically-minded business men who usually take charge of reform campaigns they know how to establish a short circuit between themselves and the average voter's intelligence.

Storm Warnings in New York City's Finances

AN unsympathetic bond market disturbs the complacency of New York's city government

BY JOSEPH D. McGOLDRICK — *Columbia University*

MAYOR WALKER is ever impatient with those who would criticize the conduct of public business in New York City. It is strange that one so sensitive about the city's reputation should himself have called national attention to its present difficulties. New York is in no financial peril. It has yet to reach the head of the toboggan down which Chicago and Philadelphia have slid. Its recent difficulty was simply that of holding a bond sale in a saturated and unenthusiastic market. There is no question about the city's present financial soundness. It has lived riotously, but it is fortunately still rich.

For some time Comptroller Berry has been disturbed over the recklessness with which the city administration has been promising public improvements of all sorts. He has had on the walls of his inner office a huge chart of these projected enterprises. They included such items as the completion of the new city subway system, the building of a second, the acquisition of a water shed at Delaware Water Gap, the 38th Street tunnel and another to Staten Island, school buildings and a wide variety of other things. The total of these reaches the staggering sum of two billion dollars. The comptroller alone in the city administration had realized that it would be no easy matter to dispose of a billion and a half of this city's bonds, even in the most bumptious boom. To do so within the next few years would be clearly impossible.

SUDDEN FINANCIAL EMBARRASSMENT

The day of reckoning arrived unexpectedly. The city suddenly found itself not bankrupt but embarrassed. There was no question of its solvency, but it found itself facing an unfriendly bond market. The city's long- and short-term securities have always been premier investments. The latter in particular always found a ready market in the vast commerce of the city. As recently as September the city was boasting that its sixty-day notes were salable at interest of less than 2 per cent. In financing its capital improvements the city first sells short-term notes in small quantities to pay bills as they are presented. From time to time, usually not more than once or twice a year, a bond sale is had to refund these notes. Long-term bonds are called in New York *corporate stock*.[1] Another type of short-term note called *revenue bills* are sold to anticipate tax

[1] See *The Finances and Financial Administration of New York City*. Columbia University Press, 1928, pp. 29–34.

payments. Since taxes are paid in May and November the city must operate from January to April and from July to October on borrowings of this sort. The city also has two groups of one-year obligations called *tax notes* and *special revenue bonds*. Provisions must be made for their redemption in the next year's city budget.

The new year opened with the city having $76,000,000 in notes about to mature and needing fully $150,000,000 to meet its budget until May 1. The notes required the sale of long-term bonds which under the charter may not be sold for less than par and may not bear interest at more than 6 per cent.

The bankers insisted that it would not be easy to float such an issue. Mayor Walker had some difficulty in realizing the seriousness of the situation in which he found himself. His first response was a display of pyrotechnics about starving the unemployed, increasing subway fares, usurious interest rates, and other matters even less relevant to the central issue. For a moment it looked as though he had put the bankers to rout. Though nettled by his attack and certainly under as much necessity as he of rescuing the city, they remained calm and quietly applied their pressure.

BANKERS APPLY PRESSURE

One can only speculate as to what was discussed at the numerous private conferences held during the two weeks of uncertainty. The bankers would have us believe that they wanted only a general promise of economy and prudence. They were, they insist, unwilling to assume to dictate to the city as to how its business should be conducted. Having satisfied themselves as to the city's good intentions an accord was satisfactorily arranged. The state legislature was prevailed upon to intervene in dramatic haste with a charter amendment permitting city notes (*corporate stock notes*) to be issued for maturities up to five years to an aggregate amount of $200,000,000. An issue of $100,000,000 of these was sold at once to the bankers at 6 per cent. It was eagerly oversubscribed and was selling at a substantial premium within a few hours. The notes have been used to refund the notes maturing at present. The bankers promise to take the additional $100,000,000, or as much of it as may be needed. They have agreed further to stand by the city with a revolving credit fund of $150,000,000 to meet the city's current needs.

The city, on its part, through its board of estimate adopted a resolution declaring:

> That the City Administration shall forthwith undertake measures to curtail and postpone its plans and undertakings; shall seek in every way to reduce the cost of its present activities, and shall endeavor to limit new projects to those which are self-sustaining in order that the city may more effectively employ its resources in serving the vital needs of the people;

And further:

> That studies will be promptly undertaken with the purpose of developing new sources of revenue and of determining what present activities of the city may be put on a totally or partially self-supporting basis; further that each department head is hereby directed to submit his plan in accordance with the terms of this resolution and as promptly as possible to make report to the Mayor on such suggestions or plans.

The *New York Times* reported that "the board of estimate's action in adopting this resolution was regarded in financial circles as a complete victory for the banking community." The terms of Mayor Walker's capitulation are certainly not revealed in the board's resolution unless the concluding paragraph is to be taken as indicating an opening of the five-cent fare question

which for thirteen years has been sealed by a conviction upon the part of all politicians and most independent observers that political death awaits anyone who dares to suggest even the possibility of an increase.

There are many other matters relating to the city's business which the bankers might well have drawn to the mayor's attention if they were prompted by a concern for the taxpayer's purse or the city's credit. It may not be amiss therefore to consider some of these aspects of the city's financial status even though they received little heed in the negotiation by political officials bent on preserving the vast patronage of the great political machine in America and bankers preoccupied with an effort to turn the situation to the advantage of the subway companies in which they have a heavy stake.

PUBLIC IMPROVEMENT DREAM SHATTERED

In the first place, the city will have to awaken from the improvement dream it has been enjoying. At least one half of its program must be indefinitely postponed. It may well be that all of the items will ultimately justify themselves, but the city cannot now think of a program that would double its debt. The city's procedure for initiating improvements of this sort is woefully haphazard. There is an urgent need of a more orderly method if an intelligent and feasible program is to be developed for meeting these needs over a ten-year period. In the past the board of estimate has readily yielded to the urging of any and every neighborhood delegation that has come before it. It has begun the tri-borough bridge and promised the 38th Street tunnel without even calculating their cost or considering them in relation to schools, water supply or other pressing needs.

As a first gesture of retrenchment the board of estimate has now placed all pending requests for improvements to be financed by borrowings in what the mayor chooses to call "a suspense calendar." They total $125,000,000. They will presumably remain in suspense until the financial stringency relaxes. There is no classification of these suspense items as urgent or non-urgent. It would be folly to delay some just as it would be reckless to push others at this time. Nothing is said of the $144,000,000 of outstanding contract liabilities which will need to be financed this year. To this must be added $50,000,000 in land liabilities. The total actual requirement for these contract and land liabilities during 1932 is estimated at $167,000,000. This with the $76,000,000 of outstanding corporate stock notes would bring the city's gross needs for 1932 to $243,000,000, or $43,000,000 more than the emergency act provided. A further $46,000,000 will be needed for tax note and special revenue bond obligations. There is also a total of $213,000,000 of items approved by the board within the last six months on which no work has been done. All of these might well be reviewed before the city adopts a revised program within its financial capacity.

EXPERIENCE WITH PAY-AS-YOU-GO

This raises the deeper question as to where the city's borrowing policies are leading it. The city today has a huge debt of $1,875,000,000. This is more than twice the figure at which the debt stood when the "pay-as-you-go" principle was accepted sixteen years ago. Moreover, the burden of this debt in interest and sinking fund charges now amounts to $160,000,000 in city budget. This is substantially in excess of the amounts which the city is borrowing annually.

The "pay-as-you-go" principle was introduced in 1915 in New York under circumstances somewhat similar to those now confronting the city. With the outbreak of the war in Europe great quantities of stock held abroad were dumped into the market. In such a condition the city was unable to sell its bonds. The bankers who came to the city's rescue made as a condition of their aid the adoption of the "pay-as-you-go" principle. An amendment designed to limit the use of long-term bonds to self-supporting projects was accordingly written into the charter. The way in which that provision has been whittled away by amendment is interestingly revealed in the present state of its text:

> The city of New York shall not expend any part of the proceeds of sales of corporate stock or serial bonds for other than revenue-producing improvements, *except* for the erection of additional wings, buildings and dormitories to city-owned hospitals already erected, for alterations, additions and improvements to city-owned hospitals already erected, and for school buildings and the acquisition of sites therefor, and the acquisition of houses for school purposes, and the furnishing and equipment of any such buildings or houses, when first erected, or acquired and *except* for the erection and equipment of the buildings of the American Museum of Natural History and the Metropolitan Museum of Art, which, by charter and contract with the city, is an adjunct of the educational system of the city, and *except* for the erection and equipment when first erected of buildings for garbage and rubbish disposal plants and dumps, and *except* the sum of $6,000,000 for the purpose of erecting a municipal building in the borough of Brooklyn, and *except* for the erection and equipment of the central library, in the borough of Brooklyn, and *except* for the completion of the erection and equipment of sections designated F and G on architect's plans for the Museum of the Brooklyn Institute of Arts and Sciences, and *except* a sum not exceeding $3,500,000 for the erection and equipment of a central court building in the borough of Brooklyn, and *except* for the erection and equipment of the New York City penitentiary on Rikers Island, and *except* the sum of $25,000,000 for the purpose of acquiring new sites for parks and playgrounds in the said city.

Not only did the bankers ignore this but, as we shall presently note, they have forced the city to abandon its retirement of subway debt by short-term financing. Except for what now appear comparatively small sums such as repaving, the "pay-as-you-go" restriction is completely a dead letter. Between 1916 and 1931 the city financed $183,000,000 through tax notes and directly in the budget.

THE PATH OF RETRENCHMENT

The administration did not retrench so much as a dollar in making up the 1932 budget. Scorning all pleas of economy and branding all warnings as efforts to impair the city's credit, the administration voted the largest budget in the city's history—a budget which would be still larger if many items had not been deceptively excluded from it. True, the criticisms leveled at the budget were hopelessly inept and amateurish. The fact is that there does not exist outside the city government a body competent and prepared to criticize the city's budget.

Economy is to be had in New York not from the striking out of large items but from a painstaking and painful pruning of a myriad of minor ones. Such a gigantic task no civic or commercial organization is prepared to assume. They are not equipped for it; they could not hope to finance it; and they would hardly be willing to face the unpopularity which such a necessary public service would entail. Nevertheless, what the city needs forthwith is a thoroughgoing housecleaning.

New York City's budget has grown luxuriantly since 1920. The present total is more than double the figure of that year. This was made possible

by an amazing mushrooming of real estate values. But that came to an end in 1929. The city's budget, on the other hand, has continued to grow. Budget making during these dozen years has been a delightfully simple process. It has consisted of putting onto the tax rolls every dollar of increasing values, multiplying the increase by the old tax rate to see how much it would produce in new revenue, and dividing this increase among the eager departments. In each of four successive years it was possible to raise assessed valuations a billion dollars. This, at the prevailing tax rate, meant more than twenty-five millions in additional spending power each year. In two of these years, the figure rose to thirty-five millions. All this was greedily absorbed in the ever growing budget.

This era of ease has come unceremoniously to an end. We have entered a period of stationary or subsiding real estate values. Budget making will henceforth involve hard work and headaches. If tax values were at all near to market values in 1929, they must be substantially in excess of those prevailing today. Certain city services must continue to grow. If a reasonable capital program is persisted in, the debt service, too, will continue to grow. The problem will be one of readjusting department needs within a fixed or shrinking budget total. The search for new sources of revenue will not offer a short cut. The city's miscellaneous revenues that constitute its general fund are $50,000,000 higher than they were ten years ago. The city is receiving $5,000,000 from subway operations that it was not receiving then. But the sums demanded of real estate have increased at an even faster rate.

The 1932 budget is not only the largest the city has ever faced but it is replete with deception. The sums anticipated from subway receipts are far greater than the facts warrant. The administration deliberately refused to provide for street paving or for the additional Brooklyn judges so that these expenses are being financed by borrowing. This will mean that next year's budget must include provision for repaying this in addition to meeting its own costs. Other items such as a $12,000,000 surplus in the rapid transit sinking fund and $2,000,000 due from the state on last year's old age pension payments were subtracted in making up this year's total expenditures. Expenditures thus concealed will certainly return to plague us next year.

Retrenchment is a task from which even the most courageous would recoil and our administration leaders commonly display little courage. Comfortably entrenched behind the huge majorities with which they were returned in 1929, they doubtless feel thoroughly secure. But may not these majorities melt away as have many other seemingly secure things in these soul-trying times?

IS THE CITY THREATENED WITH A DEFICIT?

One may ask, therefore, whether New York is likely to be faced in the future with an unbalanced budget, such as has brought misery to Philadelphia and countless smaller cities. About 30 per cent of New York City's $700,000,000 budget is met from various miscellaneous sources. The remaining 70 per cent is obtained from a levy upon the real estate of the city. Of the miscellaneous revenues, part are earmarked to special purposes. Bridge revenues, for example, are shown in the department of plant and structures budget, and the pay of certain forces is met from these revenues. Other sums are shown as coming from the Inter-

borough Company under the dual contracts. These are deducted from the amounts necessary to meet the outstanding rapid transit indebtedness. The total of such revenues shown in the budget and subtracted from it, amount to $66,000,000. This brings the $697,000,000 budget down to the $631,000,000 announced by the board of estimate. When on the first Monday in March, the board of aldermen proceeds to fix the tax rate, the comptroller will report to it an estimate of the general fund which includes all other miscellaneous revenues of the city. This figure, now tentatively estimated at $114,000,000, will be deducted from the $631,000,000, and the difference, let us say, $517,000,000, will be asked of the taxpayers of the city.

A deficit can arise in either of two ways. In the first place, the miscellaneous revenues may not come up to expectation. This is particularly true of that portion of the miscellaneous revenues which is shown in and directly deducted from, the city budget. These estimates are made in September. They are not the work of the finance department. One would expect them to be less dependable than the February estimate of the general fund which is made when the completed returns for the year 1931 are available. It is possible that the miscellaneous revenues of this class may prove far less than the sums deducted in the budget. The shortage on this account might conceivably run to several million dollars.

That this is not an idle speculation may be judged from the fact that the 1931 general fund receipts were $20,000,000 below the estimate on which the tax budget was based. The state income tax for example, which had been yielding $27,000,000, suddenly fell off to $13,000,000. The state tax on mortgages in which the city also shares was likewise halved. Virtually every item in the city's list of miscellaneous revenues showed the effect of depression. Even on sums that do not go into the general fund there are decreases. For example, subway revenues which had been estimated at $8,130,000 fell to $6,400,000. The effect of such decreases is virtually the same as deficiency in the general fund. With its miscellaneous income impaired to the extent of $20,000,000 the city was able to balance its budget only by resorting to the very dubious policy of draining off the surplus assets of the sinking funds. As a result the city which had begun the year with a $56,000,000 cash balance ended it with a balance of but $32,000,000. Despite this, the 1932 general fund was estimated at $125,000,000 in making up the budget. On this basis a tax rate of $2.53 was promised. The February estimate of $114,000,000 has necessitated a $2.59 tax rate. The sinking fund surpluses are no longer available for rescue if this falls short.

The second source from which a budget deficit might arise would be tax delinquencies. The city has fared well to date in the collection of its real estate tax. This has been due to several circumstances. Perhaps the most conspicuous among these has been the fact that the bulk of this city's population lives in apartment houses, so that a landlord stands as a buffer between the unemployed rent payer and the city treasury. Another factor has been the insistence which mortgage holders place upon the prompt payment of taxes which are a first lien. If general economic conditions are not soon better one may query whether tax payments will not be more difficult in 1932 than they have been in 1931. The 1932 budget

does, it is true, carry an item of $5,750,000 for taxes levied prior to 1931 and now deemed uncollectible. Even should the city pass through the present calendar year without embarrassment it is certain to have to face the succeeding year with great caution.

IS THE FIVE-CENT FARE AT ISSUE?

Very early in the conversations with the bankers it was delicately suggested that the city might put the services which it renders on a paying basis. The mayor is reported to have seized upon this as a demand for an increase in the subway fares and grown quite irate. It was pointed out that it could as well refer to bridges, ferries, water and docks. The opinion prevailed, however, that the mayor was correct in his inference that subway fares were foremost in the bankers' minds and his newly acquired open-mindedness on the whole matter has been construed as the beginnings of conversion to a fare increase.

The city does, it is true, have substantial investments in various public enterprises. The more important portions of its outstanding debt incurred for services commonly classed as public utilities include the following:

Rapid transit	$730,229,889
Water supply	356,748,328
Docks	170,952,500
East River bridges	64,800,000
Ferries	14,700,000

The accounts of the city are not kept in such a manner that one can determine to what extent any of these enterprises are self-supporting. The debt service items are not segregated and operating costs are obscured in the budgets of the departments. The comptroller is reported as having declared the water revenues insufficient by several millions to meet the operating costs of the department and the charges on the water debt. A deficit of a million dollars on the municipal ferries is claimed by the department operating them. Bridge tolls were abolished by mayoral fiat twenty years ago and could be as readily restored.

Any efforts to increase the charges for these services would occasion sharp controversy but nothing will do more to befog the issue and arouse public emotions than the suggestion, that transit fare be tampered with. The city owns all of its subway lines. Those now in operation were turned over in 1912 to two companies who were given contracts providing for a five-cent fare.[1] After operating costs are met the companies receive preferential payments amounting to $14,000,000 in the case of the I.R.T. and $10,000,000 in the case of the B.M.T. Revenues above these sums go to the city. Since the subways were built with city bonds, if the returns are insufficient the city must provide for the interest and sinking funds on these bonds from taxation. From 1919 to 1929 nothing was received and the costs amounting to some $13,000,000 annually were borne from taxation.

The five-cent fare is costing the taxpayers of the city not more than $10,000,000 annually at the present time. A seven-cent fare would increase subway revenues by $25,000,000. All of this, except in so far as costs were increased to improve service, or the money evaporated on its way from the company's turnstiles to the city's treasury, would belong to the city. The Interborough's accumulated deficits were paid off several years ago and only $5,500,000 remains to be paid to the B.M.T. The seven-cent fare would of course yield, perhaps, $6,000,000 to each on their elevated proper-

[1] See Rogers, Dickinson and McGoldrick, *The Cost of Rapid Transit to the City of New York* (Mayor's Committee on Taxation, 1931).

ties. In view of their present decrepit state, one may query the justice of this to their riders.

The important point is, however, that the $25,000,000 which might thus filter to the city's treasury from the increased fare would be a small fraction of the half billion the city collects annually from real estate; nor can there be the slightest assurance that this money would not be speedily absorbed in the expansion of budgetary activities.

THE DELANEY PLAN

Attention also focuses on the Delaney plan. This means of assuring the five-cent fare on the city's new subway lines has always stood as a mockery of the pay-as-you-go idea.[1] The statute under which the new city subway system is being built permits them to be operated at a five-cent fare during the first three years, but beginning with the fourth year they must be self-supporting. With the high construction cost it is estimated that nothing less than a ten-cent fare would meet this requirement. The chairman of the board of transportation, Mr. Delaney, therefore sponsored a scheme to retire a large portion of this cost before the fourth year of operation through the issue of four-year bonds. Five issues of $52,000,000, a total of $260,000,000 have been made. It was hoped to thus reduce the subway construction debt to an amount which could be carried by the proceeds of a five-cent fare.

It is, of course, a bit incongruous for the city to build schools with forty-year bonds and subways with four-year ones, but the effect upon the city's total debt is the same. The arguments Mayor Walker makes against piling up interest charges come with little grace from an administration which has been busy scuttling the "pay-as-you-go" amendment. On the other hand, the bankers could hardly propose to substitute fifty-year bonds for the outstanding four-year Delaney plan issues. To do so would be equivalent in its effect to meeting current expenditures for emergencies with fifty-year bonds.

The amortization appropriation for these four-year bonds reached $49,000,000 in the 1932 budget. This would be its maximum as the first issue matures this year. It would then be possible by appropriating $49,000,000 annually for sinking fund and nine or ten millions more for interest to issue $52,000,000 of these bonds each year.

It is not enough for the bankers to commission a well-known firm of accountants to audit the city's books. Chief Accountant MacInness keeps first rate books. They were doubtless in perfect order. What such an examination would not find, however, is the waste that runs through probably every department of the city.

[1] *Cost of Rapid Transit to the City of New York*, p. 33 ff.

What Municipal Home Rule Means Today

III. Michigan

In Michigan home rule exists by legislative liberality rather than by constitutional grant

BY ARTHUR W. BROMAGE — *University of Michigan*

Ever since the revised constitution of 1908 and the subsequent home rule act of 1909, Michigan has been considered as a state in which cities enjoy home rule. But home rule in Michigan exists by legislative liberality rather than by direct constitutional grant. This has been the common observation of many authorities in the field of municipal government. Professor H. L. McBain in his substantial contribution to the literature of the subject called home rule in Michigan a "matter of legislative grace rather than of constitutional right."[1] That was in 1916. A series of court decisions since 1916 now makes it possible to evaluate more fully the legal status of cities.

THE LEGAL POSITION OF CITIES

The revised constitution of 1908 stipulated that, "The legislature shall provide by a general law for the incorporation of cities" and that "under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter."[2] Thus was the way opened for the home rule act of 1909 and the numerous amendments thereto. This home rule act or general law of incorporation outlines mandatory charter provisions, permissive powers, and finally powers which no city may exercise.[3] The original home rule act was anything but illiberal in the delineation of municipal powers, but legally the cities were still subject to legislative control.

In 1919 the supreme court in *Kalamazoo* v. *Titus* approached the problem from this altogether proper angle. Kalamazoo had prescribed by ordinance the rates at which gas should be furnished to consumers. Although the home rule act granted to cities the power to provide for the use, regulation and control of their streets by public utility companies, it did not delegate the power to fix rates. The supreme court ruled that the power to fix rates might not be implied. It was not expressly delegated and was therefore non-existent so far as municipalities were concerned. The court reviewed the home rule clauses of the constitution and came to this significant conclusion:

> The impressive thing about these constitutional provisions is that they recognize and affirm the theory that cities owe their origin and their powers to the legislature. 'And while

[1] H. L. McBain, *The Law and Practice of Municipal Home Rule* (1916), p. 620.

[2] Art. VIII, sec. 20 and 21.

[3] The most recent compilation of the home rule act and amendments is in *Compiled Laws* (1929), sec. 2228–2274.

cities may refer power to do some things, as, for example, power to acquire certain public works, directly to some of these constitutional provisions, it must be admitted that all of these provisions should be considered with reference to the fact that legislative power is vested in the legislature and that the constitution recognizes as former constitutions have recognized, the general control of the legislature over cities. That the legislative power ought to be exercised in such manner as to preserve the right of local self-government is a doctrine which in application in no way modifies or qualifies the idea of the general legislative power of creation and control.[1]

After the sweeping doctrine laid down in *Kalamazoo* v. *Titus*, no doubt remained as to the general legal position of cities. Much remained to be done in the interpretation of the home rule act. In so doing the supreme court has frequently made use of the justly famous rules of Judge Dillon. *Lowler* v. *Nagel* (1924) is one of the best illustrations of this practice. Detroit amended its charter to authorize a civil service system and a retirement fund for employees. The home rule act which listed "a system of civil service" among the permissive charter provisions, was silent as to pension systems.[2] To sustain the amendments to the Detroit charter the supreme court fell back upon the doctrine of implied municipal powers as derived from the express provisions of the home rule act. Said the court:

The power must, of course, be found in the legislative enactment. It need not, however, be delegated in express words. . . . It is sufficient if it be "necessarily or fairly implied in or incident to the powers expressly granted" or "essential to the accomplishment of the declared objects and purposes" as set forth in the enactment. 1 Dillon on Municipal Corporations (5th ed.), sec. 237.[3]

[1] Kalamazoo v. Titus, 208 Mich. 252 (1919), at p. 265.

[2] 1 *Comp. Laws* (1915), sec. 3307, subd. r.

[3] Bowler v. Nagel, 228 Mich. 434 (1924), at p. 440.

In this instance the supreme court found it possible to sustain the retirement fund as an implication from the express power to provide for a system of civil service.

The three strands which integrate the web of decisions by the Michigan supreme court in interpreting the home rule act are Dillon's familar rules of express, necessarily implied or incidental, and essential powers. Nowhere has the supreme court more clearly admitted this than in *Barnhart* v. *Grand Rapids* (1926). The court therein ruled: "The powers of a city are limited to those expressly granted, those necessarily implied in or incident to those granted, and those essential to the declared objects and purposes of the corporation."[4]

Just one more example. The city of Jackson changed its fiscal year from January 1 to July 1. By charter amendment the city made it legally possible to have a six months' budget and tax levy to carry over to the new fiscal year. But the home rule act stipulated that each city charter provide "for an annual appropriation" and "for annually laying and collecting taxes."[5] The legality of the six months' budget and levy was carried to the supreme court. This case, *Jackson City Commission* v. *Hirschman* (1931) is significant as one of the most recent interpretations of the home rule act. The supreme court pointed out that a permanent policy of six months' appropriations would have been specifically inhibited. Nevertheless, since the right of cities to change their fiscal year might be implied from the home rule act, and since a six months' budget and tax levy was a temporary necessity to effect a modification of the fiscal year, the court sustained the Jackson charter amendments. In so doing the justices

[4] 237 Mich. 90 (1926), at p. 96.

[5] 1 *Comp. Laws* (1929), sec. 2230, par. f. and g.

emphasized the liberality of the home rule act and their intention to interpret it in a broad manner: "The purpose of the legislative enactment was to give the city a large measure of home rule. It relates to matters strictly municipal. Considering its purpose, it should be construed liberally and in a home rule spirit."[1]

Thus, in 1931, Michigan cities still derived their powers from legislative enactment. It is only fair to emphasize, however, that to date the home rule act has been broad in its grants, and construed by the courts in accordance with a home rule spirit. Home rule in Michigan is a matter of tradition and custom rather than of constitutional guarantee. But precedent has been piled upon precedent until the legislature and the courts will find it difficult to turn back from the existing policies and decisions. This is a rare situation in an American state, to have custom and tradition run before the letter of the law.

FRAMING, ADOPTING AND AMENDING CHARTERS

Equally as important as the legal status of cities is their utilization of the constitutional power to frame, adopt and amend their charters. No longer is a municipal charter a special act of the legislature. The well of local initiative has been released in charter drafting. On May 1, 1931, Michigan had 135 incorporated cities. Of this number, 81, or 60 per cent, had taken advantage of their power to frame and adopt a home rule charter. Of these 81 home rule cities, 41, or 50.6 per cent, had adopted city manager charters; 19, or 23.4 per cent, had the commission plan; and 21, or 25.9 per cent, had mayor and council charters.[2] There were in addition seven home rule charters no longer in effect, having been superseded by subsequent home rule charters. This makes a grand total of 88 charters. The home rule cities range from Detroit with a 1930 population of 1,568,662, to Pinconning with 826 inhabitants. Here is a distinct gain from the old system of heterogeneous, special act charters. The technical advances of municipal administration during the past two decades are embedded in many of the charters of the new order.

As a matter of fact, the development of city manager charters in Michigan under the home rule act has not been uncontested. The home rule act of 1909 required that each city charter provide "for the election of a mayor who shall be the executive head."[3] Under the home rule charter of 1916 the city commission of Grand Rapids had power and authority to select a mayor. For ceremonial purposes and in so far as required by the state law the charter designated the mayor as the executive head. Yet real executive power was lodged in a city manager.[4]

The supreme court in *Kopczynski* v. *Schriver* (1917) upheld the manager charter of Grand Rapids, not upon any comprehensive legislative grant of home rule powers, but upon a technical interpretation of the word election. In substance the court ruled that the charter did provide for the "election of a mayor," although he was selected by the commission. In the court's own words: "If the home

[1] Jackson City Commission v. Hirschman, 253 Mich. 596 (1931), at p. 599.

[2] These statistics were compiled by the author from the official files of home rule charters at Lansing. For detailed analysis of home rule charters in Michigan as of January 1, 1928, cf. Paul Webbink and W. R. Maddox, "Home Rule Charters in Michigan," in *Mich. Mun. Rev.*, vol. 1, p. 25 (Feb. 1928).

[3] Mich., *Public Acts* (1909), No. 279, sec. 3.

[4] Grand Rapids, *Charter* (1916), secs. 54, 87, and 88.

rule act was intended to restrict the election of a mayor to a popular election, it would have been easy to say so. We do not think the charter provision as to the election of a mayor is illegal."[1]

By the grant of executive authority to a manager the court was unquestionably troubled. In precise language the home rule act called for a "mayor who shall be the executive head." But the justices insisted: "We do not feel called upon in the proceeding to decide whether the powers conferred upon the city manager conflict with those of the mayor." By a broad interpretation of the word election was the right of Michigan cities to freedom of choice as to their forms of government sustained. The liberality of the supreme court may be measured by McBain's statement in 1916 that "literally construed" the home rule act "might be held to necessitate that all charters should provide governments of the mayor and council type."[2]

The right to frame, adopt and amend their charters has meant much to the cities of Michigan. Whereas the structure of county government has remained in the rigid mold prescribed by the constitution, municipalities have seized the opportunity offered them by the home rule act and the *Kopczynski* v. *Schriver* case to make rapid strides toward manager government. The vast amount of worthwhile experimentation with home rule charters and forms of government has already been statistically demonstrated. Indicative of the legislative attitude was the 1929 amendment to the home rule act to the effect that a municipal charter might provide "for the selection of the mayor by the legislative body."[3] In this instance the letter of the law was made to conform to a substantial body of existing practice.

So much for the 81 municipalities of Michigan which have adopted home rule charters. What of those 54 cities which failed to exercise the privilege extended to them by the constitution and the home rule act? A majority of these municipalities are still operating under special charters granted by the legislature prior to 1908 with or without home rule amendments thereto. A minority of the 54 laggards are content with the general law for cities of the fourth class, *i.e.*, cities from 3,000 to 10,000 population. This minority, legally endowed with the power to adopt home rule charters, is content with the mayor and council form of government as handed down to them by the legislature in the fourth class city law. Obviously, these municipalities are in no sense home rule cities, and must be summarily dismissed.

A similar process will not suffice for the majority of these 54 cities. The majority, as already noted, are operating under special act charters. The constitution of 1908 as amended in 1912 permits cities operating under special act charters to amend them without framing and adopting a complete home rule charter. The files at Lansing of home rule amendments to special act charters give ample evidence of local initiative on the part of some of these cities that have not adopted home rule charters *in toto*. With few exceptions the special act cities are communities whose size and growth have not necessitated complete charter revisions. On the other hand, a few, notably Ann Arbor, might derive great benefit from the framing and adopting of a home rule charter of the manager type. The continual practice of patching up special act charters by home rule amendments is of dubious merit.

[1] 194 Mich. 553 (1917), at p. 559.

[2] H. L. McBain, *op. cit.*, p. 610.

[3] Mich., *Public Acts* (1929), No. 126.

SPECIAL LEGISLATION PROHIBITED

Michigan cities have enjoyed under the home rule provisions of the constitution of 1908 and the home rule act of 1909 substantial benefits. In addition, they have had the protection of constitutional guarantees against special legislation. Whereas the legislature was allowed almost untrammeled jurisdiction in delineating the home rule powers of cities, it was inhibited from passing special acts without a local referendum. Under the terms of Article V, section 30:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act, excepting acts repealing local or special acts in effect January one, nineteen hundred nine and receiving a two-thirds vote of the legislature shall take effect until approved by a majority of the electors voting thereon in the district to be affected.

Henceforth special acts were closely circumscribed. They must not be enacted where a general law was applicable; they must with few exceptions be submitted to a local referendum. Nevertheless, the legislative session of 1911 retained to some extent the spirit of special legislation and nine local acts were passed. Each one was subject to local referendum.

In reviewing special acts of the legislature the supreme court has definitely stood upon the avowed declaration of the constitutional convention that the intent of Article V, section 30, was "to eliminate the vast volume of local legislation."[1] The purpose of this section was to abolish legislative intrusion into municipal affairs by special enactment and to secure to cities the right to control their local affairs. With this in mind the supreme court has consistently declared unconstitutional special acts passed where a general law might have been applied.[2]

Moreover, with the passing of the years the legislature has lost much of its flair for special acts. In the legislative sessions of 1923, 1925, 1927, and 1929, the number of special acts dealing with cities totalled only four. Four special acts pertaining to cities in four legislative sessions indicates how greatly the legislature has desisted in recent years from its former practices. The game is hardly worth the candle when every special act with very few exceptions must be submitted to a local referendum and may very possibly contravene the requirement that no special act can be passed where a general act can be made applicable.

This is a large tangible gain over the situation which existed before 1908. Prior to that year a flock of special acts with reference to individual cities passed each legislature. The system of legislative deference to local bills introduced by local representatives opened the way for pressure groups to force acts through the legislature with reference to individual cities. On this score the cities of Michigan have gained immeasurably by the constitution of 1908.[3]

HOME RULE ACT AND GENERAL LAWS

Not only by amendments to the home rule act, but by changes in the general laws have the powers of cities been modified. These general laws often raise the problem of the extent to which they apply to home rule cities. In 1919 Detroit passed a zoning

[1] Cf. Common Council of the City of Detroit v. Engel, 202 Mich. 536 (1918), at p. 543.

[2] Cf. 1 *Comp. Laws* (1929), p. 212, for an authoritative review of the opinions of the supreme court.

[3] For an analysis of the situation prior to 1908, cf. R. T. Crane, "Municipal Home Rule in Michigan," in Ill. Mun. League, *Proc. of 4th Annual Conv.* (1917).

ordinance, although the power to zone was not expressly delegated by general act, nor did the home rule act contain such a delegation. After stating that the power to zone could not be implied from various sections of the home rule act, the supreme court in *Clements* v. *McCabe* (1920) ruled:

> The controlling test is whether by any adequate, definite provision in the constitution or general act passed pursuant to it cities have been vested with this evolutionary and comprehensive police power of zoning asserted here. . . . Assuming, but not deciding, that such power is by the constitution committed to the legislature, it has not by express grant in adequate terms delegated the same to cities.[1]

The next move was made by the legislature. By general law "the legislative body of cities and villages" was given the power to zone.[2] Concurrently, the legislature amended the home rule act to read that each city might in its charter provide: "for the establishment of districts or zones. . ."[3]

The question then arose—could a city functioning under a home rule charter zone without first amending its charter? The supreme court upheld the power of home rule cities to zone under the general law directly by ordinance and without a charter amendment which was a prerequisite under the home rule act. Said the court in *Dawley* v. *Ingham* (1927) with respect to the general law that the legislative body of cities and villages might zone by ordinance: "The permissive power granted by the statute was not an amendment to the charter, neither did it require adoption by charter amendment to authorize enactment of the ordinance.[4] In other words, here is an instance in which home rule is relatively meaningless. It is much easier for a home rule city to zone directly under the general law than to invoke the provisions of the home rule act.

This is all well and good. What, however, if the general laws and the home rule act are in conflict? Which then controls a home rule city? The home rule act as amended to 1929 provides that each city may have in its charter provision: "For the regulation of trades, occupations and amusements within its boundaries, not inconsistent with state and federal laws. . . ."[5] On the other hand, under the general laws of the state veterans have the right to "hawk, vend and peddle their own goods, wares, and merchandise within this state by procuring a license for that purpose" from a county clerk.[6] The attorney general has ruled in times past that veterans licensed under the terms of the act can peddle anywhere within the state including cities and villages "without further license authority from such cities and villages."[7] Recently the attorney general's office has called attention to the fact that "cities and villages have the right to insist upon licenses under local ordinances until the courts have passed upon this matter."[8]

This situation only emphasizes the general principle that cities have only those powers expressly granted to them either by the constitution or by legislative act and those which can be necessarily implied therefrom. There is no special sanction to the provisions of the home rule act. Careful articula-

[1] Clements v. McCabe, 210 Mich. 207 (1920), at p. 219.

[2] Mich. *Public Acts* (1921), No. 207.

[3] Mich. *Comp. Laws* (Supplement, 1922), sec. 3307, par. x.

[4] Dawley v. Ingham, 242 Mich. 247 (1927).

[5] Cf. Mich., *Public Acts* (1929), No. 126.

[6] *Public Acts* (1921), No. 359.

[7] Attorney General, *Report* (1923–1924), pp. 41–42.

[8] This statement was made by letter to the director of the Michigan Municipal League in 1931.

tion, therefore, of general law provisions to the home rule act is a prime necessity.

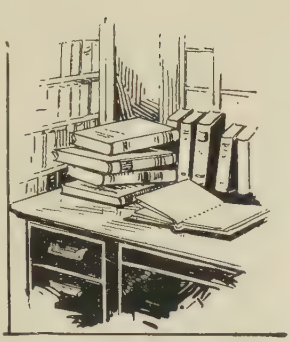
As a matter of law, home rule means to the cities of Michigan little more than the procedural right to draft their own charters and to be exempt from special acts of the legislature. Actually, it means much more. For example, great pressure was brought to bear on the Michigan legislature in 1931 to provide for review of municipal budgets by the state tax commission. Representative Culver's so-called Indiana plan as amended provided for the review of the finances of local units upon petition of three per cent of the taxpayers. Municipalities had to adopt the act by local referendum before they became subject to its provisions. Even this measure failed of passage in the house. The governor then warmly advocated the plan in a special message. The bill was reconsidered and passed by the house. It was finally laid low in the senate. Opponents of the measure maintained throughout that it violated the principles of home rule. Senator Rushton argued that it was unconstitutional because it attempted to strip cities, counties, townships and school districts of the right to govern themselves. Many political factors entered into the rejection of Culver's bill in the senate. But paramount among them was the opposition of the cities based upon the home rule principle. Thus was a general law, which would have made serious inroads into the principle of the home rule act, defeated.

CONCLUSION

Habit, they tell us, is the flywheel of society. For twenty-three years now, the mechanism has rotated around the home rule principle in Michigan. It would appear that Judge Cooley's declaration in *People ex rel. Le Roy* v. *Hurlbut* in favor of an inherent right of local self-government, was expressive of an underlying body of opinion in Michigan. This has been strengthened and augmented by the constitution of 1908. The precedent of relatively broad grants of power to home rule cities has been established. Formerly, the supreme court used Dillon's rules to interpret the powers of specific cities under special charters. Now the court utilizes Dillon's rules to interpret the general provisions of the home rule act as applied to all home rule cities. "Political experiment has not yet produced in this state, the autonomous city, a little state within the state."[1] Such is the language of the supreme court. Yet by the grace of the legislature and the wisdom of the court Michigan cities have enjoyed untold benefits from the home rule clauses of the constitution of 1908.[2]

[1] Kalamazoo v. Titus, 208 Mich. 252, at p. 261.

[2] County government in Michigan presents an interesting contrast. Cf. the author's "The Crisis in County Government in Michigan," *Amer. Pol. Sci. Rev.*, vol. 25, no. 1, pp. 135–145 (Feb. 1931).



RECENT BOOKS REVIEWED

CITIZEN COLE OF CHICAGO. By Hoyt King. Chicago: Horder's, Inc., 1931. 158 pp. $1.50.

Mr. King, intimately associated with George E. Cole for thirty-five years and much of that time his secretary, writes a brief and popularly styled biography full of praise for a man who played a large part in the movements for governmental reform in Chicago from 1895 to 1930. Mr. Cole was a stationer by business and not a rich man, but he managed to find time to serve as president of the Municipal Voters' League and to fight corruption in Chicago politics for many years. Later, he was president of the Citizens' Association and held other offices with the Association and with the Legislative Voters' League and the Constitutional Convention League. His career started with ward politics and advanced through city, county, and township politics to state politics, but always his main interest was the government within the Chicago area and anything that affected it, whether controlled by state or other governments.

He stood at all times for honesty and sincerity in his dealings, backing the good candidate regardless of his affiliations. One deal is recorded wherein Mr. Cole agreed to use his influence against trying certain cases of township officials, if the other party would see to the passage in the legislature of a bill abolishing the corrupt and useless township governments. He felt that the end justified the means, but deals were not a usual part of his strategy, which involved chiefly straightforward, courageous, and well-nigh endless fighting for the causes he espoused. Though never a public office holder, Cole made his influence felt tremendously. He worked hand in hand with Graham Taylor and others against exploitation of street railway franchises, corruption within the civil service, padded payrolls, and other like evils. Nearly always he was successful, but not always. The last great reform to which he devoted himself was constitutional revision. The new constitution failed of adoption in 1922, but Cole did not despair. Shortly before his death this veteran reformer in spite of his eighty-five years was strongly aiding a movement for another constitutional convention.

FRANK M. STEWART.

University of Texas.

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FINANCIAL CONDITION AND OPERATIONS OF THE NATIONAL GOVERNMENT 1921–1930. By W. W. F. Willoughby. Washington: The Brookings Institution, 1931. xii, 234 pp. $3.00.

As its title indicates, this book discusses the financial condition and operations of the national government since the budget system was adopted in 1921. It is a companion volume, in a way, to the author's treatise on *The National Budget System*, published in 1927. However, it sticks closely to facts and figures and makes practically no suggestions for improving the accounting and reporting of the national government. The author merely expresses a hope that the form in which the facts are presented in his study may bring about an improvement in the manner in which financial data are now presented in official reports.

The financial condition of the national government is approached from the standpoint of the balance sheet. Since the national government does not have a satisfactory balance sheet, the author has constructed one covering the ten-year period under consideration. In this connection he devotes considerable space to a discussion of the obligations of foreign governments and the securities of subsidiary corporations. Next,

an operating statement is set up for the national government for the same period. Following this statement is a factual treatment of national income, national expenditures, and national debt, which extends over the major part of the book.

It is to be regretted that the author did not see fit to discuss the financial policy of the national government in his study. By reason of this omission much of human interest in connection with national finances during the past ten years remains unwritten. A book that might otherwise have been widely read may, on this account, receive only scant attention.

A. E. Buck.

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Federal Services to Municipal Governments. By Paul V. Betters. New York: Municipal Administration Service, 1931. Publication No. 24. 100 pp. $1.00.

It has only been a short time since students of political science showed any interest in federal-municipal relations except, and on the whole quite casually, in two fields of relationships. The first was legal, and involved for the most part constitutional limitations on the local ordinance power. The second was in a general way, social—largely a matter of grants-in-aid, particularly along the lines of vocational education. Mr. Betters, however, has prepared a handbook that illustrates a third viewpoint of at least equal importance and possibly a long step in advance of both—that of the more or less informal service of federal agencies to the municipalities of the country.

The approach is through the federal unit—that is, each federal department and miscellaneous board or commission offering services to municipalities is described in reference to its activities in the local field. Beginning with probably the best known and certainly the most extensive services offered by the department of commerce and its outstanding bureaus of standards, mines and census; the departments of agriculture, interior, justice, labor, treasury, war and selected miscellaneous establishments are treated in equal detail. The whole represents a multiplicity of services, probably for the most part unsuspected by even the professional research worker; and that are, incidentally, easily located through an excellent index arranged on a *functional* basis.

Aside from a well written and unusually definite statement of the problem, there are hints throughout of more subtle phases of federal relationships of importance to research bureaus everywhere. In the delicate matter of adjusting public service and private enterprise the coöperation of the division of geodesy and private engineering companies offers interesting experiences (p. 28); the project to be undertaken on an "unauthorized expenditure" basis involving contractual relations between federal unit and municipality are illustrated in various places (pp. 21, 29, 51–52, *etc.*); and the conditions under which a local educational investigation assumes a sufficiently "typical" character to warrant a federal undertaking, offer guides to keep the wider fields of research policies within the boundaries of general interest.

A careful reading of this pamphlet will not only greatly strengthen an investigator's knowledge of research aids, but with an appreciation of the implications involved in a large part of the data, will illumine the true functions of the research bureau; and in the broader field of political science, will indicate a new viewpoint in American federalism.

John F. Sly.

West Virginia University.

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Progress Report of the Santa Barbara County Planning Commission. By the Commission, 1931. Mimeographed.

County planning has emerged as a convenient form of regional planning in places where the boundaries happen to approximate those of an area one would naturally select for a regional plan. Of these, Santa Barbara County, California, under the able directorship of L. D. Tilton, set out on a three-year trial program, the doings of which are now reported. For a modest expenditure of county funds amounting to $11,000 per annum, or 11½ cents per taxpayer plus gifts averaging ⅓ as much, the report lists no less than 93 major activities in controlling the growth and change which "are daily phenomena in Santa Barbara County."

The commission's "aim has been first to give the people of the county an understanding of its policies, a knowledge that the Commission stands for certain things; e.g., well-laid out residential areas; compact, efficient commercial centers; clean roadsides; delightful parks and beaches; an efficient traffic circulation system and the like." It "has made the preparation of plans subordinate to the more necessary duty of finding the key spots where impulses which lead to growth and change originate. It has tried to establish an effective liaison with those men or

groups who preside over such vital centers." Beaches are being saved, drives are being preserved, subdivisions are being regulated, model improvement plans have been made for ranches, many beautiful sections of the county have been planned in detail. The commission's work is meeting a permanent community need.

ARTHUR C. COMEY.

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THE BETTER HOMES MANUAL. Published in Coöperation with Better Homes in America. Edited by Blanche Halbert, University of Chicago Home Economics Series. University of Chicago Press, 1931. 781 pp. $8.00.

RECENT TRENDS IN AMERICAN HOUSING. By Edith Elmer Wood, Ph.D. New York: The Macmillan Company, 1931. 317 pp. $3.00.

Two new books have just been added to housing literature; one written by Dr. Edith Elmer Wood on *Recent Trends in American Housing* and the other, *a Better Homes Manual* edited by Blanche Halbert. Unlike in every respect, they each make a definite contribution to the discussion of an important problem.

Mrs. Wood's book gives a thoughtful analysis of the progress in housing betterment in the United States during the past fourteen years. It is a readable volume, evaluating war housing, the post-war housing shortage, experiments in tax exemption and rent control, new construction programs of commercial builders and large scale operations of limited-dividend companies.

The author states that housing is an economic problem not solvable by wage increases. Bad forms of housing penalize both the lower-wage earners and society which must pay the costs of the anti-social consequences, for health, safety and public morals are inevitably jeopardized. Housing is not an urban problem alone; it affects rural areas as well. Regulation by law is essential but it will not wholly solve the problem. City and regional planning, zoning, financial aid to home owners, and satellite towns for the housing of certain economic groups, all help but even they are insufficient. Commercial construction reaches only the upper third of the population because builders establish sales prices beyond the economic reach of the rest of the population and slum clearance, while eliminating bad spots, does not provide for those dehoused. There have been practically no slum clearance projects in American cities except in a few instances where limited-dividend housing corporations have functioned. Minimum health-and-decency standards for all housing cannot be secured without recourse to governmental subsidy. This method of providing low cost housing is commonly practiced in European countries but has not been accepted in America except in a few isolated instances and to a limited extent. The resort to such aid is repugnant to the American business man, the author explains, although such a stand is incompatible with the current practices which prevail in regard to subsidies for other purposes.

"The net result of accomplishment" during the past decade and a half in housing betterment in America "is hardly one to justify a high degree of optimism," is the author's conclusion.

Of quite a different character is "The Better Homes Manual," which is largely a compilation of essays by different writers, abstracts from published brochures, and adapted articles from magazines. Its 781 pages deal with the fundamental requirements of housing, including the essentials to be checked in the selection of suitable sites, construction practices, equipment, financing, home furnishings, maintenance, city planning and zoning, and like topics that affect the serviceability of the dwelling in one or another way.

To the home economists it will make an appeal in its discussion of efficiency kitchens, color schemes, reconditioning of floors, walls and woodwork, and suitability of types of furniture. The social case worker or the young couple about to purchase a home will find in the reproduction of the optimum standards recommended by the White House Conference on Child Health and Protection, guides that are of practical value to aid in the choice of dwellings. The wide scope of topics treated will prove helpful to local committees of Better Homes in America.

The Manual is more of a reference book than a treatise on housing. It presents a certain amount of duplication and overlapping of material, due to the fact that it consists of an assembly of papers some of which discuss similar topics; and at times there is a certain amount of conflicting advice. Thus, one writer states that the cost of the lot with municipal improvements "rarely should exceed 25%" of the cost of the house and lot; another, that this cost should "not exceed 30%"; while a third puts lot and improvements at 35 per cent. By combining recommendations of different authors for the reduction of the cost of construction one can approximate zero costs.

BERNARD J. NEWMAN.

REPORTS AND PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

Condemnation Procedure in Kansas City.—Kansas City Civic Research Institute, 1931. 72 pp. The recent experience of an expensive street widening project being assessed against a comparatively small district in spite of its city-wide value, and the operation of the new ten-year plan calling for additional condemnations suggested a study of the subject. This was undertaken at the request of the Property Owners' Division of the Real Estate Board. The report is devoted primarily to the results of condemnation procedure in Kansas City, but includes a statement on its development and gives suggestions for improvement. The latter emphasize the establishment of an office of Commissioner of Condemnation and Assessments in the Department of Finance, a condemnation jury to determine the award for property taken, the establishment of a revolving fund from which the city can pay general benefits and the principal and interest on special assessment bonds, and the collection of assessments at the same time as general taxes. (Apply to Civic Research Institute, 114 West Tenth Street Building, Kansas City, Missouri.)

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Current Revenue and Expense of the City of Rochester.—Hazen Pratt. Rochester Bureau of Municipal Research, 1931. 62 pp. At the request of the Chamber of Commerce, the Bureau undertook to compare the 1930 expenditures of Rochester with the rather similar cities of Dayton and Columbus in Ohio. After visits to the Ohio cities, Mr. Pratt was able to segregate and adjust the figures so as to make the comparison a valid one, for general municipal expense and revenues and schools. The report consists primarily of detailed tables which are on the whole self-explanatory. (Apply to Rochester Bureau of Municipal Research, 45 Exchange Street, Rochester, New York.)

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Planning and Zoning Problems.—Westchester County Planning Federation, 1931. 53 pp. The 19 municipalities of Westchester County have created an Association to promote community planning, to provide a clearing house for information, and to coöperate in matters affecting the county plan. The Federation has semi-annual conferences at which are discussed important phases of its work such as the accomplishment and administration of zoning, the making of plans, the Regional Plan of New York and its relation to Westchester County, modern control of subdivision, gasoline stations, automobile parking, and the powers of zoning boards. (Apply to Westchester County Planning Federation, 201 Main Street, White Plains, New York.)

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A Regional Police Plan for Cincinnati and Its Environs.—Bruce Smith. Institute of Public Administration, New York. 1932. 28 pp. This study undertaken for the Cincinnati Regional Crime Committee pioneered in exploring the resources of the one hundred and forty seven police units of six counties and in suggesting ways in which the police forces of the entire region might be made more effective. The program calls for coöperation and coördination based on accepted police methods for the repression of crime. Of especial importance are the knowledge of crime made available quickly throughout the region, the control of radiol highways and railways, coördination of protective and investigating work, training, criminal identification, the use of the criminal *modus operandi* system and the identification of lost property. Some of the adjustments suggested are already being introduced. Through such common action the rural areas may demonstrate their ability to meet conditions of today before their local autonomy is lost through absorption by larger units and the practical possibilities suggested in this study are of value to small communities as well as to the closely populated districts. (Apply to Institute of Public Administration, 261 Broadway, New York City. Price 50 cents.)

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Committee on City Finances.—Detroit Bureau of Governmental Research, Detroit. 30 pp. A committee representing prominent civic organizations in Detroit was organized at the request of the city council to put into concrete form the measures proposed by Mr. Ralph Stone to improve the city's financial condition. With the help of the detailed knowledge of city affairs afforded by the Detroit Bureau of Govern-

mental Research, the Committee was able to make a number of important recommendations. This report, issued after nine months of work, lists these recommendations and in a parallel column on the same page, the action taken by the council in connection with the points raised. (Apply to Detroit Bureau of Governmental Research, 51 Warren Avenue West, Detroit, Michigan.)

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Report of the New York State Commission for the Revision of the Tax Laws.—Albany. 1932. 75 pp. With Senator Seabury C. Mastick as chairman and Dr. Robert Murray Haig as director of research, the Commission has arrived at important conclusions and recommendations. The results of the research work and a detailed analysis of the revenue problem are published in separate volumes. The thoroughness and comprehensiveness of the report merit detailed review and only a few of the points discussed may be mentioned here. The Commission proposes plans for the distribution of revenues, for the control of local finances, for the improvement of tax administration, and for the taxation of public utilities. It makes suggestions for establishing reserves for taxes of excessively variable yield and advocates a petition to Congress for a Commission on Relations of Federal and State Revenues. The relief of the real estate tax burden is also considered. (Apply to New York State Commission for the Revision of the Tax Laws, Albany, New York.)

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Smoke and Its Prevention.—H. M. Faust. Ohio State University, 1931. 15 pp. The Engineering Experiment Station at Ohio State University has produced another useful pamphlet. The cause of smoke and the means of its elimination are briefly and clearly described and illustrated. A reduction in the amount of smoke produced is of interest because of economy as well as health and the concrete suggestions offered in this bulletin should speed the disappearance of this unnecessary evil. (Apply to Engineering Experiment Station, Ohio State University, Columbus.)

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League of Virginia Municipalities Year Book.—220 pp. Public officials and all others concerned with government will find the 1932 Virginia Year Book of interest and value. It contains a directory of all Virginia officials, a description of the government of the state and its various units, a résumé of the election procedure and a description of the League of Virginia Municipalities. Comparative statistical tables include local tax rates, assessed valuations, indebtedness, license taxes, and public utility rates. The attractive form as well as the important content of the volume make it an important addition to the library of state year books which are an important source of information on governmental affairs. (Apply to League of Virginia Municipalities, Travelers Building, Richmond. Price $6.00.)

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Taxation and Public Expenditures in Pettis County and the City of Sedalia.—Associated Industries of Missouri, St. Louis. 1931. 74 pp. The general dissatisfaction with public financial conditions is producing a large volume of surveys of taxation and public expenditures. One of these was undertaken for the city of Sedalia, (population 20,806) and Pettis County, by the Department of Taxation and Governmental Research of the Associated Industries of Missouri, to serve as a basis for analysis and recommendations by the Pettis County and Sedalia Chamber of Commerce Tax Committees. The report itself furnishes a description of the government of the two units and presents financial statistics on assessed valuation, tax rates, revenues and expenditures. (Apply to Associated Industries of Missouri, Railway Exchange Building, St. Louis.)

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Report of the Executive Committee to the Governor's Tax Conference.—Springfield, Illinois. 1931. 46 pp. In July, 1931, Governor Emmerson called a tax conference to suggest means of bringing some semblance of order and equality out of the chaotic condition of public finance in Illinois. The Conference appointed an executive committee to undertake the study which resulted in the program described in this report. The points recommended are summarized as: restoration of the public credit, and relief for distressed taxpayers through the provision of new sources of public revenue, the provision of installment payment of delinquent taxes, measures to reduce public costs, the check of public expenditures by provisions for uniform public accounting and uniformity of assessments to make possible the consolidation of taxing bodies when desired by the voters. (Apply to Governor's Tax Conference, Springfield, Illinois.)

JUDICIAL DECISIONS

EDITED BY C. W. TOOKE — *Professor of Law, New York University*

Liability in Tort.—TORTS—LIABILITY OF CITY FOR ACTS OF POLICE OFFICERS—CONSTRUCTION OF STATUTORY BOND.—The generally accepted common law rule that a municipality is immune from liability in tort for the acts of police officers,[1] which obtains in all of the states except Florida, a rule which has recently been slightly modified by statute in New York and Pennsylvania,[2] does not prevent frequent actions being brought against municipalities by persons injured by the dereliction of such officers. The refusal of the courts to limit this immunity is well illustrated by two recent decisions. In *Lauxman* v. *Tisher*, 239 N. W. 675, the Supreme Court of Iowa holds that the negligence of a police officer resulting in a severe injury to a prisoner while being conveyed to jail imposes no liability upon the officer nor consequently upon the municipality. So, also, in *Kebert* v. *Board of Commissioners of County of Wilson*, 5 Pac. (2d) 1085, the Supreme Court of Kansas holds that the negligence of a sheriff which caused the death of a prisoner compelled to work in the construction of a sewer will not charge either the officer or the county with liability.

In order to correct in part this anomaly in the law of tort liability several states have enacted statutes for the protection of private individuals against injuries occasioned by acts of police officers by requiring such officers to take out a bond conditioned upon the faithful performance of their duties and providing for compensation to be paid to those suffering injuries because of official dereliction. These statutes have been construed to give to the individual injured a direct action against the surety for any tortious act committed by the officer either by virtue of his office or under color of his office.[3] Thus in *Hodge* v. *U. S. Fidelity & Guaranty Co.*, 155 S. E. 95, the Court of Appeals of Georgia holds that the surety is not to be held liable where the plaintiff's husband was shot by an officer while engaged in a controversy with another officer. On the other hand the Supreme Court of Mississippi in *Carlisle* v. *City of Laurel, et al.*, 124 So. 786, properly held that the act of an officer in making an unwarranted arrest while on duty subjected the surety to liability for the tortious act. In other words, statutory bonds of this kind do not impose any additional liability upon the municipality but make the surety liable to respond in damages in cases in which, but for the rule exempting it, the municipality would be subject to a common law liability.

The decisions in Kentucky bearing upon the construction and application of such statutory bonds are more numerous than in any other state. In a late decision, *Murphy* v. *Phelps*, 43 S. W. (2d) 1010, the Supreme Court of Kentucky holds that the execution of such a bond by a policeman

[1] Craig v. Charleston, 180 Ill. 154, 54 N. E. 184. An exhaustive review of the English and American cases may be found in Nettleton v. Prescott (1908), 16 Ont. L. Rev. 528, 12 Ann. Cas. 790.

[2] Pa. Laws of 1929, Art. 403, §619 and N. Y. Laws of 1929 ch. 406, which imposes liability for negligent operation of vehicles operated by municipal officers or employees.

[3] The Georgia Statute (Code 1926, §291), for example provides that "Every official bond executed under this Code is obligatory on the principal and sureties thereon . . . for the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office as by his failure to perform, or by the improper or neglectful performance of those duties imposed by law."

has no effect upon the rule of law that a city will not be liable to respond in damages for the acts of a police officer. In this particular case the court sustained a demurrer of the city to the complaint and ruled that a verdict in favor of the officer in an action for damages was *res adjudicata* as to the liability of the surety. Another late decision, *National Surety Company* v. *Hester* (Ky. Court of Appeals) 44 S. W. (2d) 563, holds that the bond of a county motor patrolman covers his negligence while performing his duties within as well as without cities in the county. In this case the bond was not given in conformance with the requirement of a statute but was held binding as a common law obligation. In contrast to this decision in *Finney* v. *Shannon*, 6 Pac. (2d) 360, the Supreme Court of Washington holds that where such a bond may be required by an act of the council, a bond issued by the surety company without the due passage of a resolution to that effect is unenforceable at the instance of one injured by the willful or negligent act of the officer in the discharge of his official duties.

Florida stands out as the most progressive state of the Union in the matter of charging municipalities with a common law liability in tort similar to that imposed upon private persons. In the recent case of *City of West Palm Beach* v. *Grimmett*, 137 So. 385, the Supreme Court of Florida held that the city was liable to a pedestrian for personal injuries resulting from the negligence of a police officer in operating his motorcycle, thus reaffirming the doctrine announced in *City of Tallahassee* v. *Kaufman*, 87 Fla. 119, 100 So. 150. To the same effect is *Wolfe* v. *City of Miami*, 137 So. 892, holding the city liable for the negligence of a convict while operating a public vehicle to carry food to city prisoners.

It is indicative of a growing consciousness of the injustice of the rule of municipal immunity that the local law of the city of New York, authorizing the payment of equitable claims which do not constitute legally binding obligations, has recently been held applicable to sustain an award to a person injured by police officers in the performance of their official duties (*Evans* v. *Berry*, 141 Misc. Rep. 920, 253 N. Y. S. 569). A study of the effectiveness of statutes requiring official bonds to protect those who may suffer from the tortious acts of officers for which the common law gives no remedy except against the officer himself would be of great value in the solution of the present day problem of what remedies should be adopted to better conform the law of municipal corporations to the modern law of private liability in tort.

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Prevailing Rates of Wages.—Limitations upon the Power of Municipalities to Contract—Illinois Law Requiring Public Contractors to Pay the Prevailing Rate of Wages Held Invalid.—A notable decision has been handed down by the Supreme Court of Illinois in *Mayhew* v. *Nelson*, 178 N. W. 921, in which the court in a tax payer's action declares invalid the recently enacted statute (Laws, 1931, p. 573) requiring all contracts for public work of the state or its subdivisions to contain a provision for an eight hour day and that the contractor will pay the rate of wages prevailing in the locality. The statute is somewhat complicated but in effect requires that the prevailing rates shall be ascertained before a contract is let and in fact incorporated in the specifications upon which the bids are to be made. It further provides that violations of this condition by a contractor shall be determined by certain administrative officials and penalties by way of deductions or forfeiture be imposed therefor. The court holds that the statute is too indefinite and that it delegates to administrative authorities legislative powers contrary to the provisions of the state constitution.

The opinion of the court advances the questionable premise that the statute "abridges the rights of contractors subject to its provisions to enter into contracts." The generally accepted principle of law in other jurisdictions, if not in Illinois, is that no one has any right to enter into a contract with a public agency but only a privilege, which may be withheld or granted upon such terms and conditions as the legislative policy of the state may prescribe.[1] The statute before us expressly states that its provisions shall not be retroactive. Equally unconvincing is the argument of the court based upon the delegation of the power to determine controversies to administrative officials. The court has evidently become so obsessed with its strictures upon administrative powers[2] that it

[1] Atkin v. Kansas, 191 U. S. 217; Heim v. McCall, 229 U. S. 207; Sweeten v. State, 122 Md. 634, 90 Atl. 180; Campbell v. New York, 244 N. Y. 317, 155 N. E. 668.

[2] See comments upon Welton v. Hamilton, by Dr. Ernst Freund in the September, 1931 number of the Review.

lost sight of the fact that it was dealing with the provisions of a contract voluntarily entered into by the contractor and not with a penal statute nor one by which vested property rights are impaired. Upon the reasoning announced by the court it seems that a clause in a public contract requiring arbitration would have to be held unconstitutional. The inconsistency of the court's argument may be noted in that at one point the statute is condemned for not designating a person to decide controversies that may arise while the gravemen of the opinion is that the statute fails because as to other matters it makes such a designation.

Although supported by earlier decisions in Illinois,[1] we cannot help concluding that the decision is unfortunate and trenches deeply into the domain which should be reserved to the legislative department of the government. Thirty years ago such a statute might have been declared unconstitutional in many states, either as class legislation or as tending to the confiscation of private property under the guise of taxation,[2] but such a ground is only hinted at in the opinion. Nor does the court refer to any of the cases in other jurisdictions in which similar statutes have been upheld. It will be interesting to watch the adjustments the court will be called upon to make when other statutes of similar purport relating to the control of the legislature over municipal contracts come before it for adjudication, especially if the people of the state of Illinois by an amendment to their constitution expressly authorize such legislation.

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Zoning Variances.—Requirement of Notice to Interested Parties.—The occasional lack of any requirement of adequate notice to property owners in a restricted district as to hearings upon applications for zoning variances is well illustrated in *Ottinger* v. *Arenal Realty Co.*, 257 N. Y. 371, 178 N. E. 668, in which the Court of Appeals held that the charter provision that the board of appeals shall "give due notice thereof to the parties" covers only the petitioning owner and the superintendent of buildings, the direct parties to the appeal. The court further holds that the clause of the zoning resolution requiring that the board of appeals shall give public notice and hearing before taking action on a petition for variation is satisfied if the notice is given in any form reasonably adapted to inform the general public and that publication in the board's own official bulletin is sufficient. In the instant case the plaintiffs, the owners of adjoining property, received no actual notice, although a rule of the board requires the petitioner to mail a notice to a list of adjacent owners furnished by the board itself. The address of the plaintiffs given in the list was erroneous, but the court holds that in the absence of a more specific direction the failure to give a proper address did not make the proceedings invalid.

It would seem that some more stringent provision should be incorporated into zoning statutes better to guarantee that all persons interested will receive notice of a hearing upon a petition for variation. Any property owner who will be injured by a violation of a zoning ordinance may bring an action to enjoin its continuance (*Roock* v. *Womer*, 253 N. Y. S. 357) and such owners should be entitled to notice of proceedings for granting a variation. In Massachusetts the statute imposes a duty upon a board of appeals to mail proper notices to owners of adjacent property which will be affected by the proposed change. That statute reads:

> No such variance shall be authorized except by the unanimous decision of the entire membership of the board, rendered upon a written petition addressed to the board and after a public hearing thereon, of which notice shall be mailed to the petitioner and to the owners of all property deemed by the board to be affected thereby as they appear on the most recent local tax list and also advertised in a newspaper published in the city or town.

The Supreme Judicial Court of that state in *Kane* v. *Board of Appeals of City of Medford*, 273 Mass. 97, 173 N. E. I., holds that such duty cannot be delegated to the petitioner and that the notice to the interested parties must be definite enough to apprise them of the nature of the variation sought. It is apparent that some amendment to the New York law should be enacted, which will assure to the owners of lands within a restricted district due and proper

[1] As, for example, People v. Federal Surety Co. (1929) declaring the Illinois Securities Law unconstitutional.

[2] People v. Coler, 166 N. Y. 1, 69 N. E. 716, 52 L.R.A. 814. This case was decided in 1901 by a divided court. After the decision of the Supreme Court in Atkin v. Kansas, 191 U. S. 207 in 1903, the state constitution was amended by expressly conferring upon the legislature the power "to regulate and fix the wages" etc., upon public works (Constitution, art. xii, §1). A statute requiring that in all public contracts a provision be incorporated that the contractor shall pay not less than the prevailing rate of wages in the locality was upheld in Campbell v. New York (1927), 244 N. Y. 317, 155 N. E. 668.

notice of proposed variations which will affect the character of the district in which their property is located.

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Streets as Playgrounds.—Liability of the City for Temporary Closing to Protect School Children.—In *Miller* v. *Mayor, etc. of Baltimore*, 157 Atl. 289, the Supreme Court of Maryland held that the city was not liable in damages to the driver of a truck injured by running into a rope placed across the road to protect school children at play during the recess period, upon the ground of the contributory negligence of the plaintiff who failed to notice the conspicuous sign suspended from the rope. The court, however, goes at some length into the general question whether the temporary closing of a street for play purposes is to be considered a nuisance for which the city would be liable to a traveler, injured while exercising due care in the use of the street, and reviews the decisions in Maryland and in other states.

This question as to how far a city under its general powers over streets may go in closing them temporarily without becoming liable to travelers or the abutting owners has never been satisfactorily worked out. Closing for a reasonable time as a police measure has generally been upheld, as for a parade (*Simon* v. *Atlanta*, 67 Ga. 618), or the protection of the sick (*Anderson* v. *Wilmington*, 2 Pennewill (Del.) 28, 43 Atl. 841, or under order of a court to prevent its proceedings being interrupted by noise (*Belvin* v. *Richmond*, 85 Va. 574, 8 S. E. 378). But when it comes to the closing of a street to provide playgrounds for children, distinctly not a street purpose, the authorities are in conflict. In *Petrich* v. *Village of Chisholm*, 180 Minn. 407, 231 N. W. 14, the Supreme Court of Minnesota held that in an action against the city for damages an ordinance closing a street through school grounds for the greater part of the day could not be put in evidence, because it was beyond the powers of the village.[1] A contrary conclusion was reached by the Supreme Court of Arkansas, in *Owens* v. *Town of Atkins*, 163 Ark. 82, 259 S. W. 396, which held that the town had power to close streets for ball games and that one refusing to observe the restrictions might be guilty of trespass. The question of the effect upon the rights of owners of abutting property nearly always turns upon whether the closing is temporary or permanent, whether for the improvement of the street or for other purposes.[2]

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Protecting Mapped Streets.—The City Plan—Attempt to Control Projected Streets by Exercise of the Police Power.—In *Arkansas State Highway Commission* v. *Anderson*, 43 S. W. (2d) 356, the Supreme Court of Arkansas affirmed a decree of the court of chancery dismissing a bill to enjoin the defendant from building upon his land within the lines of a street not opened but merely projected on the city plan. The town of Cabot, in preparation for the widening of a state highway running through the town, had enacted an ordinance making it unlawful for any owner of land to erect any structure within the projected lines of the extended highway. The court held that the power of the town to take land for this purpose was limited to the statutory method of condemnation and that the ordinance was void as an attempt indirectly to appropriate the defendant's lands without compensation.

The only method for protecting projected streets in outlying districts under the city plan unanimously accepted by the courts has been that based upon the control of the privilege of dedicating streets and highways (*Village of Lynbrook* v. *Cadoo*, 252 N. Y. 308, 169 N. E. 394). The ingenious proposal to apply the device of condemning the right to condemn later private lands for projected streets seems to have been found to be too complicated a scheme to receive any serious consideration by legislators. And the attempt to attain the needed protection against the improvement of private lands which may later be required for public use by thumbmarking them under the pretext of a valid exercise of the police power has uniformly been defeated by the courts. Indeed in a proceeding to condemn property, a failure to base the damages upon present values upon the theory that the owner had been precluded from developing his property because of a notice that it would later be required for street or park purposes has been held sufficient grounds for setting aside the award (*Matter of City of New York* [*Inwood Hill Park*], 230 App. Div. 41, 243 N. Y. S. 63, aff'd 256 N. Y. 556).

[1] Similar decisions based upon the absence of express legislative authority are Stevens v. City of Dallas (Tex. Civ. App.) 169 S. W. 188, and County of Harris v. Kaiser (Tex. Civ. App.) 23 S. W. (2d) 840.

[2] See notes in the April and June, 1930, issues of this Review, Vol. xix, p. 263 and p. 434.

Municipal Ownership.—INCIDENTAL POWER TO SELL SURPLUS WATER TO CITIZENS OF ANOTHER STATE.—The joint water-works enterprise of Kansas City, Missouri, and Kansas City, Kansas, authorized by identical statutes of the two states in 1921 and approved by resolution of Congress in 1922 (42 Stat. 1058) is one of the notable examples of interstate compacts to meet the growing needs of municipalities. The question of the power of Kansas City, Missouri, to supply water to non-residents has been recently before the Supreme Court of that state in *Speas* v. *Kansas City*, 44 S. W. (2d) 108. This was a taxpayer's action to restrain the city officials from selling water to outside consumers, alleging that the authorization of the charter did not justify supplying municipalities in Kansas and that such disposal was seriously impairing the efficiency of the service to residents of the city.

The court holds that the charter power of the city to sell surplus water to non-residents does not contravene the state constitution, and that the sale in Kansas does not involve an exercise of governmental power in another state, but is a proprietary act the validity of which is to be determined by the local law. As to the question of the effect upon the service supplied to the residents of the city, the court holds that complaints of this character must first be passed upon by the state public service commission, the jurisdiction of the courts being limited to a review of the orders of the commission when certified to the circuit court for that purpose. The opinion reprints in full the compact between the states which authorized this important coöperative enterprise.

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Private Highways.—REGULATION OF PRIVATE ROADS BY MUNICIPAL ORDINANCE.—The power of a municipality to regulate the operation of vehicles on private ways by prescribing rules of the road for those making use of them is upheld by the Supreme Court of Idaho in *Crossler* v. *Safeway Stores, Inc.*, 6 Pac. (2d) 151. The question was directly in issue a bearing upon the contributory negligence of the plaintiff in a civil action for damages, the defendant setting up a violation of the traffic ordinances of the city of Moscow. The driveway was upon the grounds of the University of Idaho and used by the public with the consent and invitation of the university authorities. The ordinance in question forbade persons standing upon the running board of an automobile "while such vehicle is in motion."

The court predicates its decision upon the premise that within its boundaries the local police power conferred upon the city is coextensive with that of the state and limited only by the constitution and general statute. Statutory regulation of travel on private roads open for public use has generally been upheld.[1] Such control, however, may not go to the extent of depriving the owner of a private way from excluding its use by vehicles operated for hire, which would result in depriving the owner of his property without compensation.[2]

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Near-Beer Ordinances.—LICENSING THE MANUFACTURE AND SALE OF SOFT DRINKS.—The Supreme Court of Alabama in *Barrow* v. *City of Bessemer*, 138 So. 552, construes an ordinance requiring a license for bottling or manufacturing soft drinks not to include the delivering or sending of such goods bottled outside the municipal limits. The court reaffirms, however, the authority of the city to impose licenses upon those selling soft drinks. A similar decision was recently handed down by the Court of Appeals, Cuyahoga County, in *Levitt* v. *City of Cleveland*, 178 N. E. 593, holding that requirement of a special license to sell near-beer to be consumed upon the premises is a valid exercise of the police power, even as applied to one holding a license to operate a delicatessen store. The discretionary power of the city to classify various businesses for the purpose of regulation will not be controlled by the courts unless clearly unreasonable and the ordinance in question prescribing a special license fee and a construction of the premises so as to be easily inspected was held to conform to these requirements.

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Indebtedness.—APPORTIONMENT UPON DIVISION OF SCHOOL DISTRICT.—The apportionment of indebtedness upon the disannexation of territory from a local subdivision lies in the discretion of the legislature of the state, which may allocate the obligations at any time it may see fit. The only limitations upon such legislative control

[1] Commonwealth v. Gammons, 23 Pick. (Mass.) 201; Weirich v. State, 140 Wis. 98, 121 N. W. 652; Grulich v. Paine, 231 N. Y. 311, 132 N. E. 100; Welsh v. Morristown, 98 N. J. L. 630, 121 Atl. 697. *Contra*, Royal Indemnity Co. v. Schwartz (Tex. Civ. App.) 172 S. W. 581.

[2] D. L. & W. R. R. Co. v. Morristown, 276 U. S. 182.

outside express provision of the state constitution is the inhibition of the federal constitution against the impairment of the obligation of contracts. In many states statutes provide that the apportionment be left to the designated court.

In Pennsylvania the matter of such apportionment upon the division of school districts is delegated to the court of common pleas (Pa. St. §§4668–4670). In *Appeal of Commonwealth*, 157 Atl. 621, the Supreme Court of Pennsylvania had before it the question of the right of the state to intervene in such a proceeding under the provision of a statute passed in 1919 (Pa. St. §17068). The court holds that the determination of the court of common pleas was final and that after the delay of a year the petition of the state to intervene cannot be granted. This decision reinforces a previous decision of the same court in *White Township School District's Appeal*, 300 Pa. 422, 150 Atl. 744, which held that the determination of the tribunal designated by law to make administrative findings is final and that the appellate courts cannot assume to redetermine or modify its order.

✻

Power of Legislature over City Streets.—Nature of Highway Improvements—A Municipal or State Function.—Despite the statement of some courts, drawing an erroneous interpretation as to the nature of highways from local precedents imposing a common law liability in tort upon cities and villages for defective streets, that the maintenance of highways is a proprietary as distinguished from a governmental function, the courts uniformly sustain the plenary power of the state legislature to assume full control over their construction and regulation. In *Taneyhill* v. *Kansas City*, 3 Pac. (2d) 645, the Supreme Court of Kansas upheld the state statute authorizing all cities having more than 115,000 inhabitants to establish main arterial highways and to provide that one-half the cost should be raised by special assessment, and affirmed a judgment sustaining a demurrer to a taxpayer's action seeking an injunction against its enforcement.

In Missouri, the decision of the Supreme Court in *State* v. *Highway Commission*, 42 S. W. (2d) 193, holds that in the performance of their duties with reference to roads and bridges officials of county and other civil divisions are agents of the state, and that, although the duty of construction and maintenance of highways may be imposed upon the local authorities, they will be entitled to subventions by the state only to the extent expressly authorized by statute. This case and the companion decision on page 196 following thoroughly review the Missouri highway statutes in relation to federal aid and municipal subsidies. The opinion in the latter case is especially valuable as illustrating the correct application of the accepted rules of statutory construction.

PUBLIC UTILITIES

EDITED BY JOHN BAUER , *Director, American Public Utilities Bureau*

Municipal and Private Ownership in Massachusetts.—Following our discussions of municipal electric plants in recent numbers of the REVIEW, we call attention to a special study of public and private electric utilities in Massachusetts by Charles H. Porter, of the Massachusetts Institute of Technology.[1]

The survey covers principally data for the year 1929, and includes number of customers, electricity generated and purchased, sales, and costs. His object was to indicate the relative efficiency of the private and public plants. In his introduction, Mr. Porter states that:

> At their *best* the municipal plants are less aggressive in demonstrating to their customers the advantages of an increased use of electricity, but pass along to them all gain resulting from the adoption of improved methods. At their *worst* the difference between the two is the difference between graft at the top and graft at the bottom.

This is, in general, a fair statement. In detail, however, it is not fully supported by Mr. Porter's figures. There is little to indicate superior economy on the part of the private plants, or that it has been shared to great extent with consumers. Nor is there proof that the private plants are more aggressive in demonstrating to customers the advantages of increased use of electricity. Whatever may be the best or the worst, the comparisons show that the municipal plants have done, on the whole, a much more economical job for the public.

Mr. Porter points out the varying factors that make impossible conclusive comparisons between individual plants. The figures, however, are broadly comparable, and they do indicate, in general, the principal differences between private and municipal plants. There are included 68 private companies, and 43 municipals. A comparison is made between the principal classes of operating expenses, taxes, and interest on capital, also rates paid by the average residential customers of forty kilowatt hours per month.

As to generating expenses, the figures are not sufficiently comparable. A large proportion of the plants, moreover, purchase power at wholesale rates. It is clear that on the average, the municipal plants are required to pay a higher price than similar private companies. This is a direct discrimination against municipal plants.

The second group of expenses includes transmission and distribution. On the average, it seems clear that there is greater economy on the part of private companies than the municipal plants. The margin of difference, however, is not sufficiently great but that it may be explained by the difference in conditions under which service is rendered.

The third group of operating expenses is new business. On the average, the companies spend $1.61 per customer per year as against 15 cents by the municipal plants. The difference appears to be taken by Mr. Porter as indicating the relative effort to extend the use of electricity. The real explanation, however, may be in the efforts of the private companies to enlist public opinion, especially newspaper support through advertising campaigns.

The last group of operating expenses includes commercial and general. Here the relative economy lies distinctly with the municipal plants. While there is wide variation, the aver-

[1] *The Journal of Land & Public Utility Economics*, November, 1931, pp. 394–438.

age for all municipal plants is $5.10 per customer per year, against $8.49 for the companies. Mr. Porter infers that the difference is due largely to management fees and administration, rather than to basic costs of operation. Whatever the reason, the facts as presented agree with the analyses that have been made from time to time in this department.

Under depreciation, Mr. Porter concludes that on the average the municipal plants make less adequate provision than the companies; $6.40 per customer per year, compared with $8.70. This difference, however, may be explained in part by the relatively lower capital cost for plant and equipment for which depreciation allowances are made, and partly by the fact that the municipal plants provide also for amortization of capital and have largely built the properties out of earnings.

As to taxes, there is the fundamental difference that the private companies pay on the average about 10 per cent of their gross revenues in taxes, while the municipal plants have no taxes except in few exceptional instances. This factor must, of course, be taken into account in a comparison between the two classes of operation.

The most striking difference between the public and private systems appears in the interest or returns paid on the capital or properties used in the public service. On the average for the private companies, the net annual payments for dividends and interest amount to 15.8 per cent of the gross revenues. For the municipal plants, the corresponding charges are much less. There are, of course, no dividends; only interest on bonds. Since the bonds are systematically amortized, the amounts outstanding are much below the capital cost of the properties. No general average is given, and there are wide variations between individual plants. The highest net interest paid is 10.5 per cent of gross revenues as against 15.8 per cent average for the private companies for interest and dividends. For a number of the municipal plants there was no net interest paid, but rather net interest received.

On the average, surplus earnings have provided 76 per cent of the capital cost of the municipal plants. The properties have been built up either directly through surplus earnings, or indirectly through the amortization of bonds. The result is a very light interest burden to be borne by present and future consumers. This contrasts sharply with the private companies which provide for the bulk of the capital costs out of security issues, and seldom make provisions for amortization. Nor do they limit the returns to actual cost, but seek the maximum net earnings attainable under an inexact system of regulation.

It is in the overheads and fixed charges or returns that the greatest differences exist between the private and municipal plants. It is here where, on the average, the companies greatly exceed the costs incurred by the municipal plants. It is here where the companies are not subjected to effective public control and where the basic economies of operation and maintenance are more than blanked so far as the public is concerned.

As to rates, Mr. Porter confined his comparisons to domestic users. Since the municipal plants are located mostly in the smaller communities, they are concerned principally with residential service and much less with the industrial.

Rate comparisons are inevitably difficult to make. There is the wide difference in form and, particularly, there is the difference in the matter of taxes. Mr. Porter attempted to make an adjustment for the tax factor, and after the adjustment he presents a comparison of bills for the different companies and municipal plants for a residential monthly consumption of 40 kilowatt hours.

This comparison shows that the municipal rates are on a distinctly lower level for what is taken to be the average residential consumer. The difference would be still greater for the smaller users. But, for the larger users, the company rates appear to give greater reductions to stimulate residential consumption. It is not clear, however, to what extent the promotional effort has actually taken place. The figures do not show the average residential consumption per customer for any of the plants.

The final conclusion stands out clear, that the municipal plants are, on the average, operated not only at lower total cost to the public, but that their residential rates are on a considerably lower level. It is a striking fact that notwithstanding the lower rates, the municipal plants have supplied over 75 per cent of their present capital investment out of earnings.

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Kansas City Ordinance for Purchase of Street Railways.—On April 12 next the people of Kansas City, Missouri, are to vote on an ordinance providing municipal acquisition, financing and

management of the street railway system of the city. The plan is a step in advance and a decided improvement on municipal ownership in other cities. It proposes to take possession of the transportation system by condemnation proceedings, paying for it by taxes as a public improvement, and operating at reduced fares under the direction of a non-political board of five citizens.

The central fact of this proposal is that the capital cost of the system is to be paid by taxes levied against land owners whose holdings of land are enhanced in value by the transportation service, while only the cost of the transportation received by the patrons is to be paid by them in the fares.

The ordinance was drafted by a group of private citizens who were interested in a solution of the street railway problem, and it is submitted to vote under the initiative provisions of the city charter. In drafting this ordinance its sponsors had two objects in mind. First, to effect a solution of a difficult problem which involved the welfare of the entire community; for the street railways had been a sore spot in civic life for sixty years, a source of strife, political corruption and civic disgrace, with two receiverships and the financial manipulation accompanying consolidations and reorganizations. Second, it was decided if possible to make the transportation system a real benefit to the people of the city, offering some slight relief from the grievous burdens imposed by present economic conditions, as well as an aid to community progress and development.

The conventional form of municipal ownership would have ended absentee ownership by eastern security holders and absentee control by the state public service commission, but would not have offered the street car riders any relief from high street car fares. The sponsors of this ordinance asserted that public transportation was a public necessity as much as streets, sewers or schools, and adopted the expedient of making the necessary investment by taxation as is done with other public improvements, requiring the patrons to pay only operation and maintenance costs. By this expedient an increase of fare is avoided and a reduction of fare is secured, which will save millions of dollars a year to the people over and above the taxes to be paid for acquisition. It sounds like magic but is very simple; it is accomplished by eliminating merely the 8 per cent return on cost of reproduction which the courts require to be paid to owners of public utilities, and excluding capital cost from fares; putting so much capital into a public transportation system the same as we would put so much capital into a public sewer system, not expecting dividends from the one any more than from the other, and not asking car riders to pay for a plant of which they never become the owners.

The ordinance condemns the capital stock of the street car company, thereby acquiring the stockholders' equity and taking possession of the property subject to the existing bond mortgage, which has twenty years to run. In this way immediate control can be acquired for a small sum, as the stockholders' equity is worth very little according to market prices of the stock, and by taking it subject to the existing mortgage there is no need for voting city bonds, floating any new securities on the present disadvantageous money market, or doing any new financing, as the property is financed for twenty years as it stands. This also avoids any difficulties over cancellation of franchise rights, as the franchise is a part of the property acquired.

Payment of the condemnation cost is made by a special tax assessed against a benefit district which covers almost the entire city, leaving out such parts as may fairly be said to lack street car service. As the taxes are to be assessed against the land only and on that according to value (not frontage), the tax against the average home owner very small (about four or five dollars) and most of the tax will fall on the high values of downtown business locations. A special assessment is provided to be made annually against all the land in the city according to value to form a street railway fund out of which the interest on the existing bond mortgage is to be paid each year, and the principal of the mortgage paid off within the twenty years it has yet to run.

It is a common thing for public improvements such as streets, sewers, etc., to be paid for by special taxes assessed against and served by these improvements. A street railway system can be handled the same way, the steel rails down the center of the street being considered a part of the street just as much as the concrete or asphalt. Kansas City now levies annually a special assessment against all the land in the city for the park and boulevard system. Therefore it is no departure from present practices, merely an extension of accepted procedure to cover another public necessity.

The ordinance lodges control of the system in a

board which is expected to function like our school board, generally conceded to be successful in handling the school system in a businesslike way. As the first members of this board are named in the ordinance, the first board at least is not subject to political appointment and there are no political strings on them. Also the board is required by the ordinance to use the present staff of the street railway system and give preference in employment to former employees, which provision is intended to prevent political interference with the personnel.

The ordinance fixes the rate of fare at six cents, with children at half fare or free if accompanying an adult relative. The rate of fare is set at six cents because the company's figures show that it has furnished street car service at 5.62 cents per passenger, which included all operating costs and full maintenance of the property, and at this rate a small operating profit should be made, which the ordinance provides shall be used to further reduce fares if possible, or to improve the service or to increase the wages of employees.

EDWARD WHITE.

Kansas City, Mo.

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"Management" in New Hampshire.—The activities of management through holding company and affiliates, were exposed and curbed recently by the New Hampshire public service commission.

The commission initiated an investigation of the operating and capital charges made by the Associated Gas and Electric Company and its affiliates to the two local operating companies controlled by the system. It ordered the production of agreements, books and records concerning all intercompany transactions affecting the local companies. This order was resisted through petition to the federal court for an injunction, which was granted with respect to the holding company and its out-of-state affiliates, but denied as applying to the local operating companies. The latter were required to furnish information with regard to their dealings with other system companies.

The commission found that the costs charged to the local companies were padded in numerous ways, and that the local profits were tapped off to the system under the guise of operating expenses, capital charges and interest payments. The principal items were as follows:

1. Management fees paid to out-of-state control equal to 2½ per cent of the gross revenues, plus expenses, without regard to the cost or need of the "services." The local companies, moreover, had their own quota of officials who presumably were competent to perform all necessary management.

2. Engineering fees paid to outside control equal to 7½ per cent, plus expenses, on all construction costs.

3. Fees of 1½ per cent, plus expenses, upon all purchases made by affiliates in behalf of the local companies.

4. Expenses of activities of the outside companies charged to the local companies, including the differences between the market and issue price of stock sold to employees.

5. Charges of 8 per cent on the balances of open book accounts, which included the charges for the various "services" as well as advances for construction and retirement of securities and financial policies determined by the "management."

The commission made sweeping orders to abolish the abuses which had existed since 1926 when the local companies were acquired by the system. It prohibited further dealings in open book accounts and the payment of interest, management and other fees. It ordered the discontinuance of all practices that were prejudicial to the local companies and required the keeping of all books and records within the state except as otherwise approved by the commission.

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Congressional Investigation of Utility Control.—Management fees, payments for various "services" and financial arrangements between operating and holding companies or affiliates, have attracted attention in recent years. Various malodorous instances have not only offended the public nostrils, but have led to the widespread suspicion that the holding company "managements" generally need thorough airing.

As a result, a resolution was adopted by the House of Representatives, presented by Congressman Sam Rayburn, Chairman of the Committee on Interstate Commerce, for an investigation of the ownership and control of power companies and public utilities. The investigation will be in charge of Dr. Walter M. W. Splawn, who has been studying holding company finances and intercompany relations for the Federal Power Commission.

It is expected that the investigation will be thorough and not merely muck-raking. The facts should be brought out and published. If there are serious evils, they should be disclosed and provisions made against their future occurrence. For sound policy the full facts are needed instead of limited instances and surmises.

MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER · *Virginia Bureau of Public Administration*

Local Government in Italy.—One of the most interesting reports to be submitted to the International Congress of Local Authorities convening in London in May of this year is that of Dr. Virgilio Testa,[1] treating of Italian local government under the Fascisti.

Dr. Testa recalls that prior to the summary reforms of February and September, 1926, which were effected by the fascist régime, local politics in Italy were, generally speaking, conducted upon rather a low level. The electoral situation was more often determined by considerations of petty jealousy, personal ambition, family animosity, and religious factionalism than by considerations of local governmental policy and administration.

The significant feature of the laws of February 4, 1926 and of September 3, 1926 is the institution in all communes, whatever their size, of an administrative chief, designated as a *podestat*, appointed for five years by the (necessarily nominal) decree of the King of Italy. This official represents the commune in all its external relations, exercises complete authority over its finances, endowments, and possessions, and issues all ordinances and regulations necessary to secure the efficient operation of the public services.

The *podestat* is assisted by a council (*consulta*), which gives its advice upon certain particularly important questions and upon any questions which the chief of the administration wishes to submit to it. The members of the *consulta* are named by the prefect, who, while free in his designation of individuals, pays close attention to the appropriate representation of economic organizations, syndicates, and local associations of trade and professional organizations, etc.[2] In the communes in which the population exceeds 100,000, the nomination of the members of the *consulta* is confided to the minister of the interior. The members of the *consulta* are not paid, but are entitled to reimbursement for their expenses in attending sessions of the body. The *consulta* is called together on the motion of the *podestat* whenever necessary. The *rapporteur* indicates that the number of questions referred to the *consulta* is higher than would be expected and shows signs of a steady growth.

In communes of more than 20,000 inhabitants the advice of the *consulta* is obligatory for certain specific matters having to do, for the most part, with finance and public works.

In communes exceeding 100,000 in population the advice of the *consulta* is obligatory in all of the similar cases with certain exceptions.

While in instances in which mandatory consultation is not provided by law, the *podestat* does not have to secure the opinion of the council,

[1] This article appears in *L'Administration Locale* for the period ending December, 1931.

[2] The choice of members of the *consulta* is arranged in a manner designed to guarantee to all of the classes of operators and of laborers a proportional representation. In effect, the number of representatives of operators is equal to those of intellectual and manual labor combined. Generally three-fourths of the places accorded to representatives of operators are given to agriculturalists, industrialists, artisans, and business men, and the remaining one-fourth to those who represent the other forms of production. In the communes where maritime transport is an important factor in the economic life of the city, three-fourths of the places are given to agriculturalists, industrialists, artisans, business men and shippers, and the remaining one-fourth to the other forms of production.

the *rapporteur* is of the opinion that the generally admirable results which have come from the good advice of the *consulta* is leading to its increasing use on non-mandatory items, and by this means the *consulta* is on its own merit, as it were, gaining a position in which it can supervise and control almost the entire communal administration. The sessions of the *consulta* are not public, but the people are aware through the press of the problems with which the *podestat* is confronted, and in consequence of the advice thereupon of the *consulta*. The *Albo Pretorio*, a bulletin published for each commune, contains also notice of all decisions of any importance.

The *podestat* supervises directly the administration of those functions and the execution of those decisions concerning which he is not under the law obliged to have recourse to the *consulta*. There does not exist in the communes executive action independent of deliberative action on the same subject.

In case of divergence of opinion between the *podestat* and the *consulta*, the *podestat* is empowered finally to resolve the issue after listening to the advice of the council. Subsequently he submits a report of the divergence to the superior authority charged with examining the deliberations of the communal authorities for conformity to the law. In case of error on the part of the *podestat* he is subject to suit for damages.

The *podestat* is responsible for all of the measures which he promulgates. In order to protect the interests of the commune, the law contemplates the intervention of administrative sanctions, more or less severe, which ultimately may result in the revocation of the *podestat's* commission by royal decree.

The *podestat* is himself responsible for damages suffered by the commune under the following circumstances:

(a) For alienations, sales, leases, adjudications, etc. effected without observing the legal regulations governing the same.

(b) For negligence in the collection and accounting of contributions and other revenues of the commune.

(c) For the presentation of budgets artificially prepared with the view of obtaining a fictitious equilibrium.

In action on any of these counts appeal will be either to the superior administrative and political authorities or to the courts.

The functions of the *podestat* is gratuitous except under unusual circumstances, in which case an indemnity is allowed according to a scale established by the minister of the interior in relation to the economic conditions of the commune.

COMMUNAL COMMISSIONS

In addition to the council, numerous commissions of various sorts are charged with duties in the communal administration. Some of these commissions are purely consultative, others are administrative bodies having virtually complete control over the service which they conduct. Formerly some of these commissions had in fact an independent taxing authority, but in the recent law this power has been suppressed. In all the communes, however, there exist certain commissions not formed under the legal regulations governing the constitution of supervisory committees for the public services (mainly laws governing supervisors of utilities), which function more or less independently of the *podestat*, particularly in the metropolitan centers.

All commissions which are nominated by the *podestat*, once they have been established by the laws or ordinances of the municipality, perform their functions in periodic meetings, the frequency of which varies with the importance of the service with which they are entrusted. The committees which are purely consultative in character report their findings to the administration each time they convene. The other commissions present periodical reports at stated intervals. Certain commissions, however, which are constituted and function under a specific statutory mandate, do not report and are not compelled to provide the local administration with any account of their activities. The chairman of a commission is in general named by the *podestat* and only in exceptional instances chosen by his confreres of the committee.

PROVINCIAL ADMINISTRATION

For the performance of regional functions and for securing regional tone in both politics and administration, Italy is divided into provinces, the administrative organization of which is similar to that of municipalities.

The chief administrative official is the *preside*, who is assisted by a council called the *rettorato*. This council is composed of from four to eight members, varying according to the importance of the province and its population. To this number of councillors are added two substitutes in each instance. These councillors are named

by royal decree upon the nomination of the minister of the interior. They are not paid, and serve four years. Their commissions may be renewed. As a deliberative body the *rettorato* is consulted on a considerable range of matters.

The sessions of the council occur upon convocation by the *preside* when he considers them necessary. They are not public but, like municipal councils, summaries of their deliberations appear in the press and in the *Albo Pretorio.* Any councillor who, without good reason, misses three consecutive council meetings is dismissed and replaced.

The executive functions of the provincial administration are confided to the *preside,* who is aided by a *vice-preside* who replaces him in case of sickness or other disqualifying circumstances. The *preside* and his assistant are named by royal decree for four years. Their functions also are performed gratuitously except in unusual circumstances wherein an indemnity is allowed by the Minister of the Interior. The *preside* represents the council in all public relations and when the council is not in session. He represents the province before the courts, he prepares the budgets, and exercises complete surveillance of employees and of the provincial bureaus. He appoints and discharges laborers (as distinguished from employees), and determines their salaries. He is also authorized to exercise disciplinary power over the employees and laborers for negligence, for malfeasance, and for misdemeanors. The *preside* and his councillors are subject to the same provisions of law which were mentioned in discussing the liability of the *podestat* in case of infraction of laws of the state and regulations of the central administration, or in the promulgation of legal measures or of acts which are inimical to the interests of the administration or of the citizens. The provincial administration contains also a certain number of commissions nominated by the council and charged with the supervision of institutions of which they are named directors.

PERSONNEL OF COMMUNAL AND PROVINCIAL ADMINISTRATION

The personnel of the communal and provincial services may be divided into two categories: The employees of the administration itself, and the technical employees. The first category is further divisible into three classes: The officials, the clerks, and ordinary workers. The technical employees comprehend those who are not attached to the "staff" departments, such as engineers, doctors, architects, etc.

The officials and employees of the communes are named by the *podestat,* with the exception of the chief secretary, who is named by the prefect. The officials of the province, including the provincial chief secretary, are named by the *rettorato.* They exercise their functions under legal provisions and regulations which outline those functions and the responsibilities which attach to them, supplemented by detailed orders from the chief of the administration or the chief secretary. The employees of the other classes exercise their functions upon the basis of instructions of the bureau chiefs. Within the limits of the regulations and legal requirements mentioned above the officials are empowered to adopt all measures and administrative orders necessary to assure the proper functioning of the public services, and for all of those orders they are responsible. However, those acts which impose a responsibility upon the administration or are a charge against the budget must be approved by the *podestat* in the communes, and the *rettorato* in the provinces.

The chief secretary of the commune assists at sessions of the council, and likewise the chief secretary of the province, at those of the *rettorato.* They have the right to give their advice in a purely consultative capacity upon the questions before the councils. This same right to be heard extends to meetings of officials. The chief secretary exercises, in fact, immediate control over the entire subordinate personnel of the administration. As Dr. Testa points out, the recruitment of secretaries-in-chief is one of the most difficult problems in Italian local government today.

FINANCIAL OPERATIONS OF COMMUNES AND PROVINCES

The approval of communal budgets is a function of the *podestat,* the council concurring; that of the provincial budgets, a function of the *rettorato.* The same thing is true of the levy of taxes as well as the surtax which the local authorities may impose upon property—the latter of which constitutes still the most important source of revenue for the provinces and a principle source for the commune. The budgets after being approved by the *podestat* or by the provincial council are subject to the review of the prefect (representing the state executive power in the provinces), who is authorized to nullify all

items in which he perceives irregularities. In any instance in which, for meeting the costs of public services or for satisfying contractual obligations, the *podestat* is authorized to request a supplement to the property tax superior in amount to the maximum prescribed by law, the approval of the items in the budget for which this additional levy is requested is confided to the *Giunta Provinciale Amministrativa*, which is a committee composed of five state officials and of one member not of the administration, and presided over by the prefect. Under these same conditions the provincial budgets are approved by royal decree upon request of the Minister of the Interior and the concurrence of the Council of State.

The authorities charged with this revision of local budgets are commanded to eliminate excesses in the estimate of expenses and in suppressing all those which do not appear extremely urgent. They are also empowered to assure themselves that adequate funds are calculated for meeting the needs of public health, instruction, welfare, transport, and agriculture, and that these do not exceed ten per cent of the ordinary receipts. The *Giunta Provinciale Amministrativa* reviews also the decisions of the *podestat* or the *rettorato* concerning any additions to the customary objects of local expenditure, or those which involve charges against the budget for more than five years. In all other cases the decisions of the *podestat* in communes of the second class are subject to the approval of the *prefect*, both as to law and policy, while in the communes of the first class this prefectorial supervision is confined to the simple certification that the laws have been observed. The same dispositions apply to the decisions of the *rettorato*. In any case in which the prefect or the *Giunta Provinciale Amministrativa* find it impossible to approve a decision of the *podestat* or *rettorato* it must give their reasons for so doing. Their decision, however, is conclusive. The budgets of the communes and provinces are presented in March of each year, and after receiving the approval of the *podestat* and his council or of the *rettorato* they are published in the *Albo Pretoria*. After this any citizen who wishes may present his objections to the budget, which are examined by the council of prefecture (composed of a prefect and four state officials). The decision of the *council of prefecture* is published also in the *Albo Pretorio*, and appeal on points of legality lies to the *Cour des Comptes*.

THE GOVERNMENT OF ROME

The government of Rome, like that of practically every other European capital, is constituted under a special statute. The chief of the Roman administration, the *governatore*, is named by royal decree upon the proposition of the ministry of the interior, and the concurrence of the council of ministers. This official is aided in the exercise of his functions by the *vice-governatore*, who is also appointed by royal decree. There is further a secretary-general who is a civil service official of the same grade as prefect.

The *governatore* and his assistants exercise for the city of Rome all of the functions which were noted as belonging to the *podestat*, the prefect, and the *Giunta Provinciale Amministrativa* with the single exception that the budget must be approved by royal decree, and certain other affairs are subject to approval by organs of the central administration.

The *governatore* is assisted by a council of twelve members named by royal decree for four years.

The *governatore* is aided by a few commissions, among the chief of which is a sanitary commission, which is analogous in powers and organization to the provincial sanitary commissions, a commission on studies in the primary schools, and a very important mixed commission of the state and city administrations for the preservation of the artistic and archaeological values of the city.

NOTES AND EVENTS

Conviction of Chicago Sanitary District Officials.—Success marked the efforts of Cook County to prosecute former trustees and employees of the Sanitary District of Chicago charged with conspiracy, when four of seven defendants were found guilty as charged by Chief Justice Harry M. Fisher of the Criminal Court February 5, 1932.

Timothy J. Crowe and Frank J. Link, former trustees, were found guilty and sentenced to serve maximum sentences of from one to five years in the penitentiary. John T. Miller, former superintendent of plants and structures, and Martin Edelstein, former head of the real estate department, were sentenced to serve six months and three months respectively in the house of correction, and were each fined $2,000 and court costs. John J. Touhy, John M. Whelan, now trustees of the district, and August W. Miller, former trustee, were found not guilty on the ground that the evidence did not connect them sufficiently with the conspiracy. Two other trustees, originally indicted, have since died. Other defendants, one of whom fled and was recently returned after a three-year absence, await trial.

The case is remarkable in many respects. All of the defendants were active leaders in both political parties. The prosecutor, John E. Northrup, has frequently charged that efforts had been made to "bury the case." The evidence, however, adduced by the testimony of some 750 witnesses, presented a situation which Judge Fisher characterized as "despicable" indicating that a "huge" conspiracy existed to rob the public treasury. It was shown that hundreds of employees were paid salaries without ever rendering any service; expense accounts were paid for trips of investigation that were never made; dummy corporations were organized and contracts were let or purchases made upon which enormous profits were had, involving overcharges running from 90 to 700 per cent. It was shown further that a bridle path was constructed at a cost of $1,068,000, whereas the work would have been expensive at one-third of the sum. Perhaps most notable was the evidence that scores of members of the Illinois legislature, in the language of the court, had "received from the coffers of the municipality vast sums of money by themselves going on the payroll or by members of their families or favorite friends being put upon it without ever rendering one dollar's worth of service."

The conspiracy cases are only one phase of a three-fold attack on the sanitary district mismanagement. The criminal cases grew out of an investigation of the district's affairs started in January, 1929, by Attorney Frank J. Loesch, who was then and still is president of the Chicago Crime Commission, while he was a special state's attorney appointed to break up the alliance of crime and politics. Formal demand for an inquiry was made by the Citizens' Association and the Chicago Bar Association. First Assistant State's Attorney Northrup was assigned to the case and worked in secret for several months before presenting the evidence for indictments. For more than a year the indictments remained in the office of the clerk for the criminal court. The case was twice reassigned after vigorous protest by Northrup. When the defendants waived jury trial, Judge Fisher called in two associates to sit with him in an advisory capacity.

Another phase of the prosecution is a civil suit filed on April 21, 1930, by the *Chicago Daily News* to force an accounting of the millions of dollars alleged to have been spent fraudulently by the trustees of the sanitary district during

1927 and 1928, and to compel restitution of the money to the district. Mr. Loesch is also associate counsel in this proceeding.

These suits name 36 defendants and will come to trial in due course. They charge that approximately 3,200 names were added unlawfully to the payrolls involving fraudulent misappropriation of more than $4,000,000 to pretended employees. They also allege that upwards of nine million dollars, derived from the sale of bonds and real estate, was illegally diverted.

A third proceeding against the Tim Crowe "whoopee" régime was the two-year investigation of the district's law department by the Chicago Bar Association's committee on public law offices. As a result, several attorneys refunded money paid to them and disciplinary and disbarment proceedings were filed against 55 lawyers on the district's payrolls during the period. The Illinois supreme court appointed Circuit Judge Thomas Taylor as commissioner, who conducted hearings over a period of six months and on July 8, 1931, in a 175,000 word report, recommended that nine attorneys be disbarred permanently, eleven suspended from practice of law for two years and 27 for one year. Seven others were cleared. The supreme court has not yet ruled finally in the matter.

EDWARD M. MARTIN.

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Alfalfa Bill Murray's Initiative Program Defeated in Oklahoma.—In his first message, January 14, 1931, to the legislature, Governor Murray demanded the enactment into law of several of his campaign promises, and, especially, those regarding taxation. The legislature approved his state tax commission bill. It also passed an income tax measure but it was not to his liking. The senate defeated his major unemployment relief scheme, and on this occasion, the governor in a second message, February 4, denounced the whole legislature in thunderous tones, and announced that if necessary he would carry the fight directly to the electorate. But he failed to move the senate his way and was forced to carry out his threat.

After a long delay, which he never explained publicly, he announced on October 15 his initiative program. He set October 24 as the day for signing initiative petitions. With much display of the event, practically all the signatures required by law were secured in the one day.

His program contained three constitutional amendments and four legislative bills. The amendments were: (1) An ad valorem measure which abolished the state ad valorem levy and reduced it on others; (2) a land escheat measure; and (3) a budget officer measure which permitted the governor to make the budget and required a three-fourths vote of the legislature to increase any item in it. The legislative bills were: (1) An income tax bill which reduced the rate on the low brackets and raised it on the higher ones; (2) a cotton and wheat acreage control bill; (3) an unemployment relief bill based on an extra cent on the sale of gasoline, and (4) a free textbook bill.

Governor Murray immediately began the campaign for the adoption of his measures. He was the chief speaker for the Murray forces, and, of course, brought all pressure to bear on the state administration to help him toward success. The opposition, organized under the headship of a "Citizens League for Constitutional Government," sought to block the program in the state supreme court but got no relief. The people went to the polls with the legality of the election in doubt.

The campaign was bitter and both sides resorted to much vilification. As soon as the time for court litigation had expired, the governor on December 4 announced that he would submit only four of the measures to a vote on December 18. He dropped, as he claimed, for technical reasons, the ad valorem amendment, the cotton and wheat control bill, and the unemployment relief bill. The opposition continued its fight on all remaining measures.

Most of the opposition came from within the Democratic ranks. Four of the state elected officials, namely, the attorney-general, the superintendent of public instruction, the auditor, and the commissioner of charities and corrections vigorously opposed the whole program. Many other officials and former ones attacked it. The Republicans were not very loud in their opposition.

The measures submitted failed by a range from 27,774 to 51,520 votes of a total of 447,038 votes cast in the election.

LIONEL V. MURPHY.

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Have Wisconsin Taxes Choked Progress?—In the summer of 1929 the *New York Times* published an editorial in which it said that Wisconsin has been reduced by "emotional politics and rash interference to a plight from which at best she will be slow to recover." "Industrial

progress" has been "choked." Wisconsin has been made "an experiment station, but years of it have shown that it is mighty expensive."

This statement and viewpoint are typical of many others found in recent years both within and without Wisconsin. To determine the validity of such criticisms, the Bureau of Business and Economic Research at the University of Wisconsin recently made an extended tax and business survey, covering the seven neighboring states of Wisconsin, Minnesota, Illinois, Indiana, Michigan, Ohio and New York. The result was the publication by the bureau a short time ago of *Wisconsin Industry and the Wisconsin Tax System.*

The survey had three objectives. First, it attempted to determine all the facts concerning Wisconsin's economic progress as compared with those of other states. This was done through thirty tests of industrial development, covering every field of economic activity, such as growth in manufacturing, net income of corporations, building construction, state income, payrolls, banking, growth of population and cities and similar indices. Many adverse statements made about Wisconsin's industrial position are based on the prominence the state income tax occupies in its tax system.

The second part of the survey was devoted to the question of tax burdens and public debts in Wisconsin as compared with those of other states. The study used twenty tests of relative tax burdens to examine the tax situation in the seven states considered. Among them were growth in total tax levies, tax burdens on general property, growth in special taxes, per capita taxes, public debt burdens and taxes on corporations.

The third section of the survey was devoted to an examination of the tax burden on manufacturing. For many years the focal point of criticism of the Wisconsin tax system has been the effect of its income tax on the development on manufacturing. All current methods of studying relative tax burdens on industry were critically examined. The survey was aided by an elaborate statistical study made by the bureau of internal revenue for the University of Wisconsin.

The survey was aided by the fine coöperation of many tax officials in the seven states and the statistical sections of the bureau of internal revenue and the bureau of census. Numerous private agencies, such as *Dun's Review* and the F. W. Dodge Corporation, also aided. On the other hand, the investigator was handicapped at many points by the complete lack of knowledge of tax and debt burdens which prevails in some communities. Many states now spending nearly 10 per cent of their state incomes on taxes are totally unaware of the burden of either their total state and local taxes or their bonded debt.

The study led to many interesting conclusions. In the analysis of thirty tests of industrial progress, computed on a trend basis for recent years, Wisconsin ranked very high in relative growth. What growth Wisconsin might have made under a different tax system could not be determined.

In twenty tests of relative tax burdens, Wisconsin was found to have a better tax and debt situation than was the case in New York, Ohio, Michigan, Illinois and Minnesota, but was not as successful in keeping down tax burdens as Indiana. Wisconsin's policy has resulted in a lower debt burden than was the case in any competing state. Wisconsin and New York, both of which have state income taxes, had smaller burdens on general property than did their neighboring states.

The tax burden on all corporations in Wisconsin, according to the federal data used, appeared to be about average for all corporations in the United States. On the other hand, Wisconsin's income tax law appears to place a somewhat heavier tax burden on manufacturing than is the case elsewhere, in spite of lower general property taxes in the state.

The survey shows quite clearly the rapidity with which tax levies have grown in all communities in the last few years. For the seven states, total state and local tax levies have increased 44 per cent from 1925 to 1930, during which time population grew very slowly. In 1930 per capita state and local taxes in this group of states exceeded $71 and took 10 per cent of the total incomes of the inhabitants of these states, while the per capita state and local bonded debts averaged over $141.

During the last three years for which data were available, state and local taxes have taken 17.4 per cent of the net profits of all corporations in the United States and 12.1 per cent of the net profits of manufacturing companies.

The bulletin is one of a series of tax studies being prepared and published at the University of Wisconsin under the supervision of Dr. Harold M. Groves, professor of taxation.

George L. Leffler, Ph.D.
University of Wisconsin.

Cincinnati's Land Assessment Cut Ten Per Cent By the State Tax Commission.—In compliance with the state law of Ohio the city of Cincinnati submitted to the county budget commission in June, 1931, its budget estimate for the year 1932. It was a retrenchment budget the only increases being those necessary to finance new activities, certain enlarged operations, the retirement fund and unemployment relief.

Subsequently the real estate appraisal became one of the footballs of the municipal campaign despite the fact that it was purely a county issue. Every effort had been made by the county auditor, in collaboration with the real estate board, to make a scientific appraisal in accordance with modern principles of real estate appraisals. The ultimate desire was to equalize assessments on all property. But after the final assessments had been announced through the newspapers, a group of property holders appealed to the state tax commission for a general cut of 10 per cent in the total tax duplicate. They plead that property values had been materially deflated as a result of present economic conditions, and that the valuations established were excessive and burdensome. Several hearings were held before the tax commission and it may be that with bitter fighting the valuations could have been sustained. However, it was nearing the close of the year, and to have fought for the appraisals as established might have jeopardized the revenues and certainly affected the cash position of the city, schools and county for 1932. As a compromise the county auditor submitted to the state tax commission a proposed cut of 5 per cent on the land duplicate. The state tax commission refused the 5 per cent cut and almost immediately voted for the full 10 per cent cut on the land duplicate.

The city of Cincinnati was in a precarious position. It had determined in June the amount of taxes which were needed to operate the city during 1932 under the provisions of its home rule charter. The county budget commission from these estimates had determined the tax rate for the city based upon the estimated tax duplicate submitted by the county auditor. The tax rate which had been established was well within the limit of a maximum tax levy allowed by state law. The question which immediately arose was whether the city had the power to change its tax rate in order to assure the revenues needed as expressed in the June budget. It finally developed that it would be necessary to take the question to court in order to reach a decision. Rather than to jeopardize the revenues for the schools, county and city for the year 1932, the city finally accepted the cut and prepared to reduce its June estimates.

The net cut in the operating budget was $338,760. Of this amount $116,197 was deducted from the appropriations of the division of welfare for unemployment relief. This activity will be financed by short term bonds authorized by the Pringle Act. Other cuts made include a cut of $57,500 from the appropriations of the division of waste collection and disposal. This cut will make it necessary to revise the schedules of collection of combustible refuse during the winter months. The $20,000 deducted from the codes of the fire department will postpone the complete equipping of two new fire companies located in the suburbs. Almost every appropriation code was affected to some degree. No new positions were created, no vacancies will be filled unless absolutely necessary, old equipment must be used for another year—these are some of the measures required to balance the final budget.

These cuts will handicap to some degree the city's operations, but every effort will be made to provide the best service possible with the funds available.

C. F. Sharpe.

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Wisconsin Protects Public Bank Deposits.—Although the record of bank defaults in Wisconsin compares very favorably with those of nearby states, nevertheless some governmental units in the state have recently been involved in bank failures. Late in 1931 it became apparent that the situation would be serious. Many municipalities were informed that surety companies would not write bonds on public deposits in 1932. Even in Milwaukee various surety bonds were canceled late in 1931, making necessary the withdrawal of municipal deposits.

The situation was further complicated because municipal treasurers were notified that only reindemnifying bonds would be supplied to them in the future, that is the treasurer would have to arrange for personal sureties, and the company in turn would reindemnify the personal sureties against any loss that might accrue by reason of the dishonesty of the treasurer. This naturally created a bad state of affairs.

Governor La Follette thus found it necessary to include this subject in his call for the special

session of the legislature. Prior to this session the matter was carefully considered and a bill was drafted which the banks and the surety companies agreed to. It passed both houses of the legislature with practically no opposition, and became a law shortly after the session opened, chapter 1 of the Laws of the Special Session of 1931.

Previously there was in effect a law (section 14.49 of the Wisconsin statutes) whereby state depositories were not required to provide surety bonds, but in lieu thereof one-half of one per cent was set aside out of interest on state deposits to build up a state fund for reimbursing the state for losses resulting from failure of depositories. The interest on state deposits was fixed by the board of deposits consisting of the governor, secretary of state, state treasurer, and attorney general.

The new law broadens this state fund to include bank deposits of all governmental subdivisions in the state. Every state bank, savings (and trust company) and mutual savings banks are public depositories, and national banks may become depositories by agreeing to accept the law. Except for sixty-day periods when the excess shall be kept as a cash reserve and receive no interest, no depository shall receive as public deposits more than twenty per cent of its average daily deposits during the preceding year, or not to exceed twice its paid up capital and surplus. State funds will be allocated so as to distribute evenly public deposits among banks.

Interest will be paid on active and inactive deposits of all governmental subdivisions at the same rate fixed for state deposits. An amendment will probably be adopted permitting the fixing of lower rates for deposits averaging under $1,500.

Each governmental unit will pay ¼ of one per cent each quarter into the state deposit fund, unless the rate is changed by the state board of deposits. These payments will be made by the banks but collected from the depositors. If the state fund falls too low, the board of deposits may draw on the general fund of the state to meet the losses, the general fund to be reimbursed from the deposit fund.

The state fire fund, in which governmental subdivisions may insure property at sixty per cent of commercial rates, also is backed by the general fund of the state. Shortly after establishment it was necessary to fall back on the general fund because the state capitol burned, but this was repaid and the fund now has such a large surplus that several state buildings have been financed from the fund.

FREDERICK N. MACMILLIN.

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The Cincinnati Retirement System.—Cincinnati, after several years of careful study, has adopted a retirement system providing retirement allowances and death benefits for all municipal employees excepting elected officials, members of independent boards and commissions, the employees of the University of Cincinnati, the employees of the municipal court and department heads. The city council, especially the finance committee, carefully studied systems in other cities before finally establishing the Cincinnati system. In this study the city was aided by the Cincinnati Bureau of Governmental Research and one of the foremost actuaries in the country.

Membership in the system was optional to all general employees employed on August 1, 1931. Those of this group who joined the system at any time up to December 3, were given credit for prior service. The city will contribute an amount equal to the accrued liability resulting from such service. The personnel of the police and fire forces employed at the time the new system was established will continue under their separate pension plans. However, after January 1, 1932, all new entrants to the city service, including the uniformed services, will be required to subscribe to the new system.

The administration and responsibility for carrying out the provisions of the system are vested in an administrative board composed of the mayor, the chairman of the finance committee of council, the city manager, the president of the civil service commission and three members of the retirement system elected by the membership.

Optional retirement is available to members upon reaching the age of sixty. Compulsory retirement is required at seventy. On recommendation of the board, the city manager may permit a person having attained the age of seventy to continue in the employment of the city for a period of two years. This privilege can be renewed at the end of the two-year period and any two-year period thereafter if the same approval is granted.

Employees contribute to the financing of the system, the percentage contributed varying from 4.14 per cent to 7.17 per cent, depending

on the age of entry. The city contributes approximately 4.8 per cent of the annual payroll at the outset. This percentage decreases gradually as prior service charges are provided for and discontinued. A member leaving the service of the city, except by retirement or death, will be paid his accumulated contributions.

Upon retirement the members receive a retirement allowance consisting of: (1) an annuity equal to the accumulated contributions at the time of retirement; and (2) a pension, in addition to his annuity, equal to one one hundred and fortieth of the member's average final compensation multiplied by the number of years of his membership service; and (3) an additional pension equal to one seventieth of the member's average final compensation multiplied by the number of years of service certified by a prior service certificate, not to exceed thirty-five years. The plan also contains provisions for retirement allowances for ordinary and accidental disability.

Ordinary death benefits are allowed to the estate of members equal to their accumulated contributions plus a lump sum payment amount to 50 per cent of the compensation received by the employee during the year immediately preceding death. Dependent widows and children of members killed in accidents in performance of duty are especially provided for.

There is no doubt that the system provides a fair and economical means of maintaining the efficiency of city services by retiring worthy employees who have reached an age where their effectiveness is impaired and replacing them with younger persons. It is hoped that the security guaranteed by the pension plan will have a beneficial effect upon the morale of city employees. On January 1 the number who had elected to join was 1,594, of whom 42 have been retired. Including fire and police 2,804 employees now on an annual compensation basis belong to the system.

C. F. Sharpe.

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Retrenchment in Missouri.—The departments and institutions of the state government of Missouri at the instance of the governor are making a desperate effort to forestall the accumulation of a large deficit in the state treasury at the end of the present biennium. Late in November Governor Caulfield advised heads of all departments of the state government that the state was facing a financial crisis by reason of the heavy slump in revenue collections and the over-appropriations of the 1931 legislature. He advised them that the active appropriations for the biennium totaled $19,336,990, and that the actual and estimated revenues for the same period available to pay these appropriations would not exceed $14,400,000, an amount approximately 75 per cent of the appropriations. The governor reasoned that the simplest way to meet the situation was to ask all spending agencies to cut their budgets 25 per cent.

Since the governor's final announcement of a horizontal cut was not made until virtually half of the biennium had elapsed, a major portion of the 25 per cent reduction must needs be absorbed in the last half of the biennium. In other words, departments and institutions for the year 1932 would have to operate on a treasury allotment which in some instances was almost 50 per cent less than the amount which they had received during 1931. Since work programs of departments and institutions had already been entered upon on the basis of the original appropriations, and since commitments are of necessity made well in advance of the time that the money is actually spent, the governor's announcement for immediate retrenchment placed a heavy responsibility on the heads of departments and institutions.

As long as remittances from the state treasury are within the terms of the appropriation acts, the governor has no legal means to hold up payments to the spending agencies. There is, however, in Missouri the unique practice of the governor withholding final approval of certain appropriation bills, and releasing the grants provided by such acts only if the state treasury towards the end of the biennium has sufficient funds available. With respect to these "holdup" appropriations, the governor could enforce his retrenchment policy simply by refusing to release any of them. But the bulk of the funds for current operations are authorized by the appropriation acts which are approved by him at the close of the legislative session, and the only way that he can subsequently effect reductions of them is to request the coöperation of the spending agencies in avoiding a deficit. In the case of heads of departments who are his appointees, he is of course able to exert considerable pressure to exact compliance with his demands. The elective officers and detached agencies are in a more independent position,

although a strong current of public approval naturally at this time supports the governor's policy, and defiance of his wishes on the part of any agency is at least a bit hazardous.

Among the elective officers, the attorney-general, the state treasurer, and the state auditor notified the governor that they had trimmed their budgets and would operate their respective departments in accordance with the reduced schedule. The board of eleemosynary institutions, the board of penal institutions, at least three of the five state teachers colleges, and a number of other agencies less seriously affected acceded fully to the governor's request.

The president of the state university was the first to question publicly the wisdom of the program of the chief executive, declaring it unwise public policy to permit a temporary financial condition to cripple the essential activities of the state university and other useful state agencies. The president and the board after a painstaking revision of the budget agreed to a 20 per cent cut, but insisted that they could not make further reductions without seriously demoralizing the institution. In applying the reduction, the president and the board are making every effort to preserve the salary standard of the institution. The superintendent of schools, the lone Democrat among the elective officers, stated in a long letter to the governor that he could not accept the cut, since he had already put into effect a revised budget as a result of a reduced appropriation, and because the new school law had materially increased the work of his department. The secretary of state, who heads a political faction hostile to the governor, it is hardly expected will fall in line with the governor's program.

While space does not permit extended criticism of the governor's method of dealing with the situation, a few words of comment may be permitted. Horizontal cuts of such a drastic character in the midst of a biennium cannot help but impair seriously necessary services. For example, as a result of the "economy" program the work of the state health department has been completely demoralized just at the time when the services of that department are most needed. More vigor in the collection of revenues would undoubtedly add appreciable sums to the available funds. If the governor had inaugurated his retrenchment policy at least three or four months earlier, which he might well have done, revision of budgets would have been considerably facilitated. While recurring deficits are seriously objectionable, deficits in extraordinary situations may be justified and certainly are not inherently evil. The whole affair does reveal the need for reorganization and consolidation of administrative agencies and the need for a real executive budget system. The realization of these needs has finally dawned upon the governor, and he is making them the swan song of his administration.

MARTIN L. FAUST.

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New York to Have New Building Code.—A revised building code for New York City has been submitted by the Merchants' Association of New York to Mayor Walker who has promised his coöperation in securing its passage. The code is an involved document, designed to improve the quality of buildings in the city at a saving estimated at not less than $50,000,000 in any year of normal building activity. George H. McCaffrey, director of the research bureau of the Association and well known to the readers of the REVIEW, served as the executive officer of the various technical committees which participated in the work.

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Mayor "General" Coxey's proposal to issue non-interest bearing bonds in small denominations for poor relief, the bonds to circulate as money in Massillon, which was described by Roy V. Sherman in the February REVIEW, has been held to be illegal by the Ohio tax commission. Under the Ohio law, the commission explains, bonds are limited to five years unless they are for public improvements.

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Miller Elected Mayor of Cleveland.—Ray T. Miller, the 39-year-old Democratic prosecutor of Cuyahoga County, was elected mayor of Cleveland over ex-City Manager Daniel E. Morgan by a majority of almost 6,000 votes in a total ballot of 197,000. The result is interpreted as a blow to the Maschke Republican organization. Mayor Miller faces many burning problems, not the least of which will be the council, which was elected last November under proportional representation.